TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 153.

H. L. BEDFORD AND LOU M. BEDFORD, HIS WIFE, PETITIONERS,

vs.

THE EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW YORK.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

CERTIORARI AND RETURN FILED JANUARY 31, 1900.

(17,558.)

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1 *Transcript of Record.*

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit thereof.

Proceedings had in said court at a regular term thereof, begun and held for its May, November terms, A. D. 1895–'8, at the United States court-house in the city of Memphis, in said district, in the following cause, to wit:

THE EASTERN BUILDING & LOAN ASSOCIATION OF Syracuse, N. Y., Plaintiff,
vs.
L. L. BEDFORD, LOU M. BEDFORD, Defendant-. } No. 487.

Buchanan & Minor, of Memphis, Tennessee, solicitors for complainant.

Mr. R. M. Heath, of Memphis, Tennessee; Mr. W. C. McLean, of Grenada, Mississippi, solicitors for defendants.

Filed June 30, 1898.

FRANK O. LOVELAND, *Clerk.*

Circuit Court of the United States, Western District of Tennessee.

EASTERN BUILDING & LOAN ASSOCIATION OF SYRACUSE, New York,
vs.
H. L. BEDFORD and LOU M. BEDFORD, His Wife. } No. 487.

Original Bill. Filed June 24, 1895.

To the honorable judges of the circuit court for the western division of the western district of Tennessee:

2 The Eastern Building & Loan Association of Syracuse, N. Y., a corporation organized and existing under the laws of the State of New York, and a citizen of said State, having its principal place of business in the city of Syracuse in said State, brings this, its bill of complaint, against H. L. Bedford and Lou M. Bedford, his wife, both of whom are citizens of and residents in Shelby county, Tennessee. And thereupon your orator complains and says that the said Eastern Building & Loan Association of Syracuse, N. Y., at the times hereinafter mentioned, was lawfully doing business in the State of Tennessee. That in pursuance of written application or subscription for shares made by said H. L. Bedford, your orator did, in accordance with its by-laws, on or about Febr'y 2, 1891, at its office in Syracuse, N. Y., issue to said Bedford a certifi-

cate representing forty-six (46) shares of its capital stock of the par or maturity value of $100.00 per share, which certificate said Bedford accepted and thereby became a member of said association your orator, and has since continued so to be with all the rights, duties, and liabilities of a member as set forth in the by-laws and in the terms and conditions printed on said certificate of stock, the original or a copy of which will be produced at the hearing on or before, if the court or counsel desire. That on or about March 20, 1891, the said H. L. Bedford made an application to your orator at its office in Syracuse, N. Y., for an advance or loan to him of $600.00 upon said forty-six shares of stock held by him as aforesaid; and at a meeting of the board of directors of your orator obtained on said application the preference for said advance or loan as aforesaid on said forty-six shares at a premium of ten per cent. on the gross amount of said loan, to wit: four hundred and sixty dollars ($460.00) and as hereinafter specified, in accordance with the by-laws and rules and regulations of your orator. That upon said application your orator granted to said Bedford, in accordance with its by-laws, an advance or loan of forty-six hundred dollars ($4,600.00) on said forty-six shares of stock as aforesaid, and that said H. L. Bedford, being indebted to your orator in the sum of forty-six hundred dollars ($4,600.00) which he accepted in accordance with the by-laws, rules, and regulations of your orator, which were then and there made a part of said contract, and in consideration of said advance and for the purpose of securing the payment of the principal sum to your orator and also of certain installments of interest and premium as provided by your orator's by-laws, etc., as aforesaid and as hereinafter more fully set forth, said H. L. Bedford duly executed and delivered to your orator seventy-eight (78) certain promissory notes of date May 1, 1891, each for seventy-two dollars and eighty-six cents ($72.86), except three maturing last which are each for the sum of thirty-eight $\frac{36}{100}$ dollars ($38.36), all payable to the order of your orator at its office in Syracuse, N. Y., as follows: One of said notes was to be paid on or before the last Saturday of May, 1891, and one on or before the last Saturday of every month thereafter up to and including the last Saturday of November, 1897, as will appear from said notes which will be produced in court at the hearing and a copy of one of which is attached as Exhibit A, to this bill and prayed to be taken as a part of it but not to be copied. That the notes so executed represent the amount of dues estimated to accrue and become payable on said shares until the same shall mature or reach their par value from the payment of said dues together with the earnings thereon; and the interest and premiums on said advance during said period. That in order further to secure the payment of said principal sum, interest and premium, said H. L. Bedford and Lou M. Bedford, his wife, by their mortgage bearing date May 1, 1891, executed, duly acknowledged, and delivered to your orator, granted and conveyed to your orator, its successors and assigns, the following premises with the appurtenances, to wit:

3

All that parcel or tract of land situate in the 10th civil district of

the county of Shelby and State of Tennessee, bounded and described as follows: Beginning at the southwest corner of J. J. Bailey's "Mull place," thence north with the west line eighty-eight and one-half (88½) rods to center of M. C. R. R.; thence east along the center of said railroad fifty-four and one-quarter (54¼) rods; thence south parallel with the west line eighty (80) rods to said Bailey's south line; thence west along said south line to the place of beginning, containing 30 acres of land. Also all that certain other tract of land situate in said district, county and State, bounded and described as follows: Beginning in the Winchester line at the east line of the John McSwine tract; thence west with the Winchester line three hundred and twenty (320) rods to John C. McLemore's northeast corner; thence south with section line two hundred and sixty (260) rods; thence east one hundred and twenty rods; thence north one hundred and twenty (120) rods; thence east two hundred (200) rods to the middle of Center Hill road; thence north with said road one hundred and forty (140) rods to the place of beginning, containing three hundred and seventy (370) acres of land.

4 The above-described premises being the same premises conveyed to H. L. Bedford by B. W. Lauderdale and wife by deed, dated Feb. 10, 1886, and recorded in vol. 166. p. 406, of the records of said county. Said mortgage was duly acknowledged on June 18, 1891, and filed for registration in the register's office of Shelby county, Tenn., on June 20, 1891, and registered in Book 207, p. 221, as from said mortgage to be produced will hereafter fully appear; a copy of same is hereto annexed, marked Exhibit B. and prayed to be taken as a part of this bill but not to be copied. Your orator is now the legal owner and holder of same. That at the time of the execution and delivery of the notes and mortgage aforesaid, the said H. L. Bedford, in accordance with the by-laws of your orator, as collateral security for said advance or loan, transferred and pledged to your orator said forty-six shares of stock held by him as aforesaid. That by the terms of said mortgage said H. L. Bedford covenanted and agreed to pay said principal, interest and premium at maturity and the interest accruing on said notes after maturity, and all fines and penalties that might be imposed pursuant to the constitution and by-laws of your orator, and to perform all promises and engagements made and entered into with it according to the true intent and meaning of its by-laws and articles of association; also to keep the buildings on said premises insured against loss by fire to such extent and in such manner as should be most satisfactory to your orator or its successors and assigns; to pay all taxes on said premises; and to do and perform many other things relative to said notes and created many rights in favor of your orator and the right to declare all notes due and payable on default in payment of one, all of which will clearly appear from the said mortgage, a copy of which is already an exhibit to and a part of this bill and the original of which will be produced at the trial and is now and at all times at the service of the court and counsel. Your orator prays that this mortgage may be treated as a part of this bill as fully as if it were herein copied and set out in full in

words and figures. Your orator further shows that under the provisions of the articles of incorporation, the by-laws and the terms and conditions of said certificate of shares issued to said H. L. Bedford as aforesaid, he agreed and became bound to pay, upon the *insurance* of the same to him, monthly installments or dues of seventy-five cents ($0.75) on each share, payable on or before the last Saturday of each month until the maturity of said stock. In the by-laws of your orator, which were made a part of said mortgage and printed on said certificate of stock, it is also provided *inter alias*, as follows: "Borrowing members who shall neglect to pay any installments on stock and interest on their loans as the same become due, shall pay to the association a fine of twenty cents per month on each one hundred dollars that they may have borrowed from the association." Also: "If the shareholder or any person shall neglect to pay interest or installments on his loan or the regular monthly installments, fees or dues, for six months, the secretary may compel payment of principal, interest and premiums, assessments, fees or dues by proceeding on his note and mortgage, which shall at once become fully due and payable and the association may cause and treat as forfeited the said shareholder's shares of stock whether deposited as collateral or not, and all payments previously made thereon shall be forfeited to the association. Punctuality and strict performance on the part of all members, borrowers, and shareholders in payment of fines, dues, interest, loans and premiums are the essence of the contract." Also: "Any shareholder who has made a loan by giving taxable property for security shall be bound to pay all State, city, or other taxes or assessments as they may become due in addition to all other payments, and his failure to do so will make his loan, notes, mortgages, premiums and interest at once fully due and payable at the option of the board of directors." Your orator further shows that the notes aforesaid embrace the monthly installments or dues falling due and becoming payable on said stock each month together with the monthly interest and the monthly premium, each at the rate of five per cent. per annum on said advance or loan as provided by the said by-laws, rules and regulations of your orator, proper credit being given for any dues paid on said stock at the time of the execution of said mortgage and notes to secure said advance; that owing to an error in computation, said notes were drawn for the sum of seventy-two dollars and eighty-six cents ($72.86), whereas the same should have been for seventy-two dollars and eighty-three cents ($72.83); said mistake was mutual and due credit has been given for any excess of payment on account of said error, as will hereafter more fully appear.

That defendant, H. L. Bedford, has failed to comply with the terms of said notes and mortgage and certificate, by neglecting to pay the sum of $72.83, the true amount of each of said several notes above described, which amount was due on one note which became due and payable on the last Saturday of June, 1893, which said note still remains due and unpaid, and that the said H. L. Bedford has further neglected to pay a like sum of $72.83, the true amount of

each of the several notes due and payable as aforesaid on the last Saturday of each and every month subsequent to June, 1893;

6 and your orator shows that said H. L. Bedford has failed and neglected and refused to pay said notes and has made default in the payment of all of same that have become due and payable since the month of May, 1893, although payment of same has been duly and often demanded of him. That by reason of the default aforesaid, and under the provisions of its by-laws and the terms of the said mortgage, your orator has elected and does hereby elect and declare the whole of said principal sum, interest, premiums, fines, dues and cost to be now due and payable and to treat said shares of stock as canceled, and the dues paid thereon applicable to the payment of said indebtedness so owing to your orator as shown. That at the time of each and every default as aforesaid, the shares of stock standing in the name of said H. L. Bedford, and by him assigned as aforesaid to your orator as collateral security, had not attained the value of $100.00 each and the same have not attained the value of more than $22.59 each, which is subject to a deduction for fines by reason of the defaults as aforesaid. That in addition to the aforesaid sums there had accrued on April 29, 1895, the further sum additional of $211.60 for fines assessed by your orator for the defaults aforesaid made by said H. L. Bedford and the non-compliance by him with the articles of incorporation, by-laws, rules and regulations of your orator. That on the 29th day of April, 1895, there was justly due your orator by the said H. L. Bedford, after allowing all just credits, deductions and offsets, the sum of $4,279.72, and your orator charges that there is now justly due it and unpaid the sum of $4,279.72, with interest, premiums and fines on said advance from said 29 of April, 1895, until paid, as provided by said mortgage and the by-laws of your orator; and no proceedings have been had at law to recover the aforesaid debt or any part thereof. Your orator now shows that its account with the said H. L. Bedford stands at this date, to wit, April 29, 1895, as follows:

To loan No. 125	$4,600 00	
27 past-due notes at $72.83 each from June, 1893, to April, 1895, incl.	1,675 09	
Fines on arrearages notes, 23 at $9.20 each.	211 60	
		$6,486 69

7 CONTRA.

By payments on certificate No. 4773	$966 00	
Interest on same as per by-laws	73 15	
Payments included in 23 notes above	93 50	
Interest on same as per by-laws	214 35	
Rebate of 27/78 gross premium or *pro rata* amount of premium unearned	159 22	
Overpayment of interest on 25 notes paid at 3c. each	75	
		2,206 97
Balance due		$4,279 72

That the balance owing from said H. L. Bedford, as shown by said amount, has arisen as hereinbefore fully described and that a copy of said account, duly verified, is attached to this bill, marked Exhibit C, and prayed to be taken as a part of it, though not to be copied. Your orator further shows that Lou M. Bedford, one of the defendants herein named, is the wife of the said H. L. Bedford; she is in no way involved in this suit other than as the wife of the mortgagor, H. L. Bedford, of the property herein mentioned, she having joined with her husband in the execution of said mortgage. To this end, therefore, your orator prays that the said H. L. Bedford may answer the several matters and things herein stated, as fully and particularly as if they were herein again repeated and they were thereunto specially interrogated; and that the defendant, H. L. Bedford, may be decreed to pay to your orator the said sum of $4,279.72, due as aforesaid, with interest, premiums and fines to accrue from April 29, 1895, together with any sums paid or which may have to be paid by your orator for taxes or insurance during the pendency of this case; that the premises described in said mortgage, or so much as may be necessary, may be sold to satisfy your orator's claim and recovery; that in such sale all rights of dower and equity of redemption be barred, whether of defendants or of persons claiming under them; that such sale be on a credit of not more than twelve (12) months, one-third of the purchase price to be paid in cash, the remainder in such installments and on such credit as may seem best; that your orator may have execution against the said defendant, H. L. Bedford, for any balance that may then remain due to your orator if the sale of the said property as aforesaid shall fail to produce sufficient to pay the full amount of your orator's claim and recovery, with interest thereon; and that your orator may have such other, further and general relief as the premises may warrant or equity and good conscience demand. Your orator further prays that a writ of subpœna may issue against the said H. L. Bedford and Lou M. Bedford, his wife, both of Shelby county, Tenn., commanding them, and each of them, to appear in this court at some day certain therein named and to answer this bill, though not on oath, the oath in their answer being respectfully waived, and abide by such decree as may be passed therein.

S

BUCHANAN & MINOR,
Solicitors for Complainant.
D. A. PIERCE, *Of Counsel,*
(By H. D. M.)

EXHIBIT A.

No. 9674.

On or before the last Saturday of June, 1891, I promise to pay seventy-two and $\frac{86}{100}$ dollars ($72.86) to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y., value received.

Bailey, Tenn., May 1st, 1891.

(Signed) H. L. BEDFORD.

EXHIBIT B.

Mortgage—H. L. Bedford and Lou M. Bedford to Eastern Building and Loan Association of Syracuse N. Y., Dated May 1, 1891.

STATE OF TENNESSEE, }
Shelby County. }

Filed for registration June 20, 1891, at 2.00 o'clock p. m. and noted in Note Book No. 13, page 153, and was recorded June 23, 1891, in Record Book No. 207, page 321. Fee, $3.50, paid.
(Signed) E. A. EDMONDSON, *Register*,
By A. G. BOOTH, *D R.*

(Foregoing is on back of mortgage.)

EXHIBIT B—Continued.

This indenture, made this first day of May, in the year of
9 our Lord one thousand eight hundred and ninety-one, between H. L. Bedford and Lou M. Bedford, his wife, of Bailey, Shelby Co., Tenn., parties of the first part, and the Eastern Building and Loan Association of Syracuse, N. Y., a body corporate, party of the second part. Witnesseth: That the said parties of the first part in consideration of the sum of forty-six hundred dollars, to them duly paid, the receipt whereof is hereby acknowledged, have sold, and by these presents do grant and convey to the said party of the second part, its successors and assigns (here follows a description of the lands as stated)—all rights of dower, or homestead in said premises, and the right to redeem the same or any part thereof, in case of foreclosure and sale, and hereby expressly relinquished and waived. And said above-described premises are hereby conveyed with the appurtenances, and all the estate, title and interest therein of the said parties of the first part; and the said H. L. Bedford does hereby covenant and agree to and with the party of the second part, its successors and assigns that at the time of the ensealing and delivery of these presents he is the lawful owner and is well seized in fee-simple of the premises above conveyed, free and clear of all incumbrances, of every name and nature, legal or equitable; and that the premises thus conveyed in the quiet and peaceable possession of the said party of the second part, its successors and assigns, he will forever warrant and defend against any person whomsoever lawfully claiming the same, or any part thereof.

EXHIBIT B—Continued.

This grant is intended as a security for the payment of the sum of fifty-six hundred eighty-three and $\frac{8}{100}$ dollars, the same being the principal, interest and premium of a loan from said association, which said loan was made pursuant to and accepted under the provisions of the by-laws of said association, and which said by-laws have been read by the mortgagor H. L. Bedford, and hereby made

a part of this contract, which said loan is evidenced and secured to be paid by seventy-eight (78) certain promissory notes of even date herewith executed by the said H. L. Bedford, payable to the said association, at its office in Syracuse as follows: One of each of said notes is to be paid on or before the last Saturday of each and every month until all of seventy-eight notes are fully paid, together with interest on each of said notes after maturity at the rate of six (6) per cent. per annum payable semi-annually until said notes are fully paid. And the said mortgagor H. L. Bedford, for himself and his wife, executors, administrators and assigns hereby covenants and agrees with the party of the second part, its successors and assigns to pay said principal, interest and premium at maturity, and the interest accruing on said notes after maturity, and all fines and penalties that may be imposed pursuant to the provisions of the constitution and the by-laws of said association, and also keep and perform all promises and engagements made and entered into with said association according to the true intent and meaning of its by-laws and articles of association; also to keep the buildings erected and to be erected upon said premises insured against loss or damage by fire in an amount and such manner and in such company as shall be the most satisfactory to the party of the second part, its successors or assigns, so that the loss or losses, if any, shall be payable to it or them, and from time to time when taken out issued on said premises, which policies shall contain the best and most approved form of mortgage clause, and at once make due proofs in case of loss, and do all other things required, deliver over to it or them all policies, and renewals thereof by said policies; and also pay and discharge, when due and payable, all taxes, assessments, rates and other charges now or hereafter levied or assessed upon said premises, and remove all adverse claims, clouds and incumbrances; also that, until full payment of the money hereby secured, nothing shall be done or suffered whereby said premises shall be diminished in value or any of said policies of insurance affected or violated. In case default shall be made in effecting such insurance, or payments, rates, other charges, adverse claims, clouds or encumbrances, as aforesaid, it shall be lawful for said second party, its successors or assigns, to effect such insurance and pay such taxes, assessments, rates, other charges, adverse claims, clouds or encumbrances, and the amount so paid shall be a lien on said premises added to the amount secured by these presents and forthwith due and payable without demand with interest, and may be collected in the same manner as the principal sum hereby secured. And it is hereby expressly agreed by and between the parties to these presents, that if default be made in the payment of any one of said notes, or any part thereof as herein provided, or in case of waste, or non-payment of the taxes, assessments, or impositions on said premises, or in case of neglect or refusal to keep the premises insured as herein provided, or in case the improvements thereon shall be kept in good order or repair, or in case of a breach of any of the covenants or agreements contained herein, or in case of failure to duly observe or

keep the by-laws of the said association, and in either
11 or any of such cases, the whole of the said principal sum, interest, premiums, fines, dues and costs, shall at once become due and payable at the option of said association, its successors or assigns, at any time thereafter to sell the premises thereby granted, or any part thereof, in the manner prescribed by law, and of all moneys arising from such sale, to retain the amount due and unpaid for principal, interest, premiums, fines, dues and costs thereof, taxes, assessments, impositions, insurance and other advances, together with the costs and charges of making such sales, and the surplus, if any there be, shall be paid by the party making such sale, on demand, to the said H. L. Bedford, or his heirs or assigns. And this conveyance shall be void if full payment of the aforesaid moneys both principal and interest, be made as hereinbefore specified and if the aforesaid covenants and each of them be well and truly kept and performed as herein specified and provided. In witness whereof the parties of the first part have hereunto set their hands and seals the day and year first above written.

(Signed) H. L. BEDFORD.
LOU M. BEDFORD.

STATE OF TENNESSEE, }
County of Shelby. }

Personally appeared before me, B. J. F. Owen, a notary public in and for the State and county aforesaid, duly commissioned, qualified and acting, H. L. Bedford and Lou M. Bedford, the within-named bargainors, with whom I am personally acquainted, and who acknowledged that they executed the within instrument for the purposes therein contained. And Lou M. Bedford, wife of the said H. L. Bedford, having appeared before me privately and apart from her husband, the said Lou M. Bedford acknowledged the execution of the said instrument to have been done by her freely, voluntarily and understandingly, without compulsion or restraint from her said husband, for the purposes therein expressed.

Witness my hand and seal of office, this 18th day of June, 1891.

(Signed) B. J. F. OWEN,
Notary Public, Shelby County, Tennessee.

12 EXHIBIT C.

Statement.

SYRACUSE, N. Y., *April* 29, 1895.

H. L. Bedford, Bailey, Tenn., in account with Eastern Building and Loan Association of Syracuse, N. Y.

To loan No. 125.....	$4,600 00	
25 past-due notes at $72.83 each, from June, 1893, to April, 1895, inclusive	1,675 09	
Fines on arrearage notes, 23 at $9.20 each...	211 60	
		6,486 69

CONTRA.

By payments on certificate No. 4773.....	966 00	
Interest on same as per by-laws.....	73 15	
Payments included in 23 notes above	793 50	
Interest on same as per by-laws.....	214 35	
Rebate of $\frac{27}{78}$ gross premium or *pro rata* amount of premium unearned	159 22	
Overpayment of interest on 25 notes paid at 3c. each...	75	
		2,206 97
Balance due		$4,297 72

STATE OF NEW YORK, }
County of Onondaga, } ss:

Before me, Albert P. Fowler, a notary public in and for the county of Onondaga in the State aforesaid appointed, qualified and duly commissioned to administer oaths and take depositions, personally appeared Alfred J. Whitton, and he being by me first duly sworn deposed and said that he is the secretary of the Eastern Building & Loan Association, of Syracuse, N. Y., and as such has charge of the records and books of account of said association; that the annexed and foregoing account between said Eastern Building & Loan Association, of Syracuse, N. Y., and H. L. Bedford is in all respects true and correct, and that the said H. L. Bedford is justly indebted to said association in the sum of forty-two hundred, seventy-nine and $\frac{72}{100}$ dollars and that there are no offsets thereto.

ALFRED J. WHITTON.

13 Subscribed and sworn to before me, this 29th day of April, 1895.

ALBERT P. FOWLER,
[SEAL.] *Notary Public in and for Onondaga Co., N. Y.*

Know all men by these presents, that we, the Eastern Building and Loan Association and Buchanan & Minor, — held and firmly bound unto said defendants, H. L. Bedford and Lou M. Bedford, in the sum of two hundred and fifty dollars; but to be void on condition that the said defendants, H. L. Bedford and Lou M. Bedford do pay and satisfy all costs that may accrue in that behalf in the prosecution of the said suit this day commenced by the said plaintiff in the circuit court of the United States for the western district of Tennessee, at said Memphis, against the said defendants; and also on failure of the said plaintiff to prosecute the said suit with effect; and also on failure of the defendants, if convicted to pay said costs.

Witness our hands and seals, this 24th day of June, A. D. 1895.

EASTERN BUILDING & LOAN ASSOC'N, [L. S.]
By BUCHANAN & MINOR, *Solicitors.* [L. S.]
BUCHANAN & MINOR. [L. S.]

Approved by and acknowledged before me, the 24th day of June, A. D. 1895.

J. B. CLOUGH, *Clerk.*

No. 487. U. S. circuit court, western district Tennessee, western division. Eastern Building & Loan Association *vs.* H. L. Bedford, Lou M. Bedford. Cost bond. Buchanan & Minor, attorneys. Returned and filed at Memphis on the 24th day of June, A. D. 1895. J. B. Clough, clerk.

The President of the United States of America to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to summons H. L. Bedford and Lou M. Bedford, citizens of the State of Tennessee, if to be found within your district, to appear before the circuit court of the United
14 States, in the sixth circuit for the western district of Tennessee, at Memphis, in said district, on the first Monday in August next, and then and there to plead, answer or demur to the bill filed in the office of the clerk of said court on the 24th day of June, A. D. 1895, against said defendants by the Eastern Building & Loan Association of Syracuse, New York, a corporation organized and existing under the laws of the State of New York having its principal place of business in the city of Syracuse in said State and who is a citizen of the State of New York. Here- fail not, and have you then and there this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court at Memphis, this 24th day of June, A. D. 1895, and the 119 year of American Independence.

[L. S.] JOHN B. CLOUGH, *Clerk.*

Memorandum.

The said defendants, H. L. Bedford and his wife, Lou M. Bedford, are required to enter appearance in this suit in the office of the clerk of the circuit court at Memphis, Tennessee, on or before the day on which the subpœna is returnable, or the allegations of the bill herein will be taken for confessed against said defendants and judgment renderd accordingly.

JOHN B. CLOUGH, *Clerk.*

Marshal's Return.

This writ came to hand on the date of its issuance, and I duly executed the same, as herein commanded, by making the contents thereof known to the within-named defendant, H. L. Bedford, at Memphis, Tennessee, on the 29th day of June, A. D. 1895, and at the same time and place delivering to him a duly certified copy thereof, together with such copy of the bill in this cause; and I further executed this writ by making known the contents thereof to the defendant Lou M. Bedford, at Memphis, Tennessee, on the 29th

day of June, A. D. 1895, and also then and there delivering to her like copy of the same, and of said bill.

Memphis, Tennessee, June 29th, A. D. 1895.

J. A. MONSON,
U. S. Marshal,
By J. A. MONSON, JR, *Deputy.*

15 No. 487. Circuit court of the United States, western district of Tennessee. Eastern Building & Loan Ass'n *vs.* H. L. Bedford, Lou M. Bedford. Summons. Issued 24th day of June, 1895. J. B. Clough, clerk. Returnable to August rule day, A. D. 1895. Ret'd and filed 15th day of October, A. D. 1895. J. B. Clough, clerk. Buchanan & Minor, attorneys.

Circuit Court of the United States, Western District of Tennessee.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, NEW YORK,
vs.
H. L. BEDFORD ET AL. } No. 487.

Answer of the Defendants. Filed Aug. 7, 1895.

Answer of H. L. Bedford and wife, Lou M. Bedford, to the bill filed herein.

The said above-named H. L. Bedford and Lou M. Bedford, saving and reserving all proper exception to said bill and answering only such parts of the same as are material to be answered say:

They admit they are husband and wife as stated. They admit that The Eastern Building & Loan Association of Syracuse, New York, the plaintiff herein, is a corporation of the State of New York, having its principal place of business in New York, and that respondents are citizens and residents of Shelby county, Tennessee. Respondents deny that the Eastern Building & Loan Association of Syracuse, New York, at the time referred to in the bill or at any time, was lawfully doing business in the State of Tennessee and require proof of the bill that it was ever lawfully doing business in said State. Respondents believe it to be true that some written application was made by respondent, H. L. Bedford, in 1891, but do not admit that such application was about Feb'y 2, 1891. Respondents require proof of the date of such application as they cannot give the exact date. As respondents have no copy of such paper and cannot accurately state its terms, they do not admit or deny that it was an application for shares in the plaintiff corporation. Respondents require proof as to this matter and require the production of the paper itself which will disclose what it is and its

16 contents. As respondents, and neither of them, are in possession of any shares of stock in plaintiff corporation and cannot speak definitely as to this matter they deny that on Feb'y 2, 1891, the plaintiff issued to H. L. Bedford a certificate representing 46 shares of its capital stock of the par or maturity value of

$100 per share. They deny that H. L. Bedford accepted such certificate and deny he ever became a member of plaintiff association and that he has continued a member thereof. Respondents require proof of the statement of the bill in this respect and require the production of the certificate of stock which plaintiff claims to have. Respondent- admits that H. L. Bedford made an application to plaintiff at Memphis, Tennessee (where it illegally assumed to carry on business), for a loan of about $4,600, but they deny that the date of such application was about March 20, 1891, and require proof of its date and of the facts in respect to such application. Respondents deny that the said application was to plaintiff at its office in Syracuse, New York. Respondents are ignorant — what took place at any meeting of the board of directors in New York and require proof of the statements of the bill in this respect and as to what was done in respect thereto. Respondents suppose it to be true that plaintiff granted a loan to H. L. Bedford but deny it was $4,600 or that he ever received any such amount. Respondents require proof as to all such matters, and as to the amount actually received by H. L. Bedford and as to the date when the same was given to him. Respondents are ignorant whether this loan was in accordance with the by-laws, rules and regulations of plaintiff and whether this loan was on any shares of stock which had been issued to H. L. Bedford and deny it was and require proof as to these matters. Respondents deny that H. L. Bedford ever received $4,600 of plaintiff or that he ever became indebted to plaintiff in that or any sum or that he accepted any such loan in accordance with the by-laws, rules and regulations of the plaintiff. Respondents admit that H. L. Bedford borrowed a certain sum of money of plaintiff and executed notes to plaintiff which were 78 in number and were dated May 1, 1891, and for the sum stated. Respondents require the production of these notes. Respondents admit that these notes covered more than the amount of money advanced to H. L. Bedford and that they embraced "dues and premiums" claimed by plaintiff but respondents deny that H. L. Bedford ever became a member of plaintiff association or that any "dues or premiums" were ever due legally from him to it. Respondents admit that
17 they executed what purports to be a mortgage, dated May 1, 1891, but they deny that such was a valid instrument in fact or law. What purports to be a partial copy of the same is annexed to the bill. Respondents require the production of the original paper which will speak for itself. Respondents deny that the same was duly executed, acknowledged and delivered to plaintiff and they deny that the same gave plaintiff any rights whatever. Respondents deny that the plaintiff is the legal holder and owner of said instrument or that the same vested any rights whatever in plaintiff. Respondents deny that H. L. Bedford was a member of plaintiff association or that any stock was issued to him or that he pledged any such stock to plaintiff. Respondents require proof of all these statements of the bill. As to the terms of the paper purporting to be a mortgage respondents refer to such paper itself, the bill saying it will be produced at any time. Respondents are igno-

rant what the provisions of plaintiff's articles of incorporation or if its by-laws or of its certificates of shares may be and they require proof as to all such matters as well as to the contents of plaintiff's charter. They deny that H. L. Bedford ever legally or in any way became a member of plaintiff association or that he ever legally or in any way acquired any shares of stock or became bound to pay monthly installments or dues of 75 cents on each share until the maturity of stock or that he became bound to pay fines of 20 cents per month on each share of stock as stated and claimed in the bill. Respondents deny any liability of any kind to plaintiff and require proof of each and every claim made by it. Respondents admit that plaintiff claims H. L. Bedford is a member of plaintiff association, but this is denied as well as any liability whatever by him or under the instrument claimed to be a mortgage. Respondents admit that H. L. Bedford has failed and refused to pay all of the notes falling due the last Saturday in June, 1893, and since, but respondents deny that plaintiff has any right whatever to collect said notes or fines or to enforce any other claim set up by it and they deny anything on any account is due to plaintiff. Respondents deny that there is due to plaintiff $4,279.72 or any amount. Further answering respondents say that on March 19, 1877, the legislature of the State of Tennessee passes an act which was approved March 21, 1877, specifying the terms upon which foreign corporations could do business in the State of Tennessee. This act (page 44 of Acts of 1877) applied only to certain classes of foreign corporations. On March 10, 1891, the legislature of the State of Tennessee passed an act (page 212 of Acts of 1891) which was approved March 17, 1891. This act
18 extended the act of 1877, just mentioned, to "building and loan associations," and other kinds of foreign corporations not previously embraced therein, and imposed the same terms and conditions upon them before they could transact business in Tennessee. If plaintiff be a "building and loan association" in fact and not simply in name then the requirements specified in the act of 1877 were extended to plaintiff by the act just mentioned.

These requirements were that the foreign corporations referred to in said acts should, before transacting any business or asserting or acquiring any right, should first file in the office of the secretary of state of Tennessee a copy of its charter or articles of association and should cause an abstract of the same to be recorded in the office of the register of each county of the State of Tennessee, in which it was proposed to carry on business or to acquire lands. On March 21, 1891, the legislature of the State of Tennessee passed an act which was approved March 26, 1871 (Acts of 1891, page 264), which extended the act of 1877 above alluded — "to all corporations chartered or organized under the laws of other States or counties for any purpose whatsoever, which may desire to do any kind of business in this State." This act specified the terms upon which foreign corporations should be allowed to carry on business or acquire property in Tennessee. This act of March 21, 1891 required such foreign corporations "desiring to own property or carry on business in this State of any kind or character" to "first file in the office of the sec-

retary of state a copy of its charter and cause an abstract of same to be recorded in the office of the register in each county in which such corporation desires or proposes to carry on its business or to acquire or own property as now required by section 2 of chapter 31 of Acts of 1877. The said act provided "that it shall be unlawful for any foreign corporation to do or attempt to do any business or to own or acquire any property in this State without having first complied with the provisions of this act."

Respondents refer to said act for a full statement of their terms. Respondents state further that the legislature of the State of Tennessee, on March 26, 1891, passed another act (page 17 of Acts of 1891), which was approved March 28, 1891. The last-named act applies to "building and loan associations" "organized under laws of foreign States and desiring to do business in Tennessee, and requires such associations, before doing any such business, to make
19 deposits of certain securities and further to file with the treasurer of the State of Tennessee a copy of its charter and certificate of deposit of the securities above mentioned. Respondents refer to these various acts of the State of Tennessee for a full statement of their terms and requirements. Respondents state that at the time of the various transactions between H. L. Bedford and the plaintiff, and at the time of the making of the notes mentioned in the bill and at the time of the execution and delivery of the instrument claimed to be a mortgage from respondents, and at the time that H. L. Bedford is claimed to have become a member of the plaintiff association and to have acquired the stock therein and pledged the same and to have had the various transactions he is claimed to have had with the plaintiff, that the plaintiff was a foreign corporation unauthorized to transact business in Tennessee, as it had not complied with any of the laws of Tennessee hereinbefore referred to. No copy of its charter or abstract of the same had been filed in the office of the secretary of state or of the State treasurer in Tennessee, and no abstract or copy had been registered in Shelby county, Tennessee, where plaintiff was assuming then to carry on business, and no deposit of securities had been made by plaintiff or certificate of deposit filed with the State treasurer. None of the requirements of the acts of the legislature had been complied with and all of the transactions had by the plaintiff with respondents or respondent H. L. Bedford were unauthorized and void. No contracts could be made by or with it and all of the same were void and could and cannot be enforced. At that time the said plaintiff was assuming to carry on business in Shelby county, Tennessee, where the various transactions in question took place. Respondents state further that the object of all of the transactions in question was to loan money to H. L. Bedford, and that whatever was done was incidental to this object, and in order to accomplish the same. Respondents were residents of Shelby county, Tennessee, and whatever was done by H. L. Bedford was done and was to be done in Shelby county, Tennessee, where all of the intercourse and business between plaintiff and respondents was to be and was carried on. Respondents claim and insist that the said H. L. Bed-

ford could never become and never became a member of the plaintiff association; that he could not acquire and never acquired stock therein or pledged the same, and that the paper claimed to be a mortgage could not be and was ineffectual as a mortgage. Respondents claim and insist that all of the transactions in
20 question had with plaintiff, and any and all papers executed in violation thereto, arose out of and was business attempted to be carried on by plaintiff in Tennessee when it had not complied with the laws of Tennessee, and that all of such acts, transactions and papers were void and could give rise to no cause of action against respondents, and respondents insist on and plead the invalidity of all such acts and transactions and the invalidity of any and all notes or instruments which may have been executed as a full and complete defense herein. Respondents believe some abstract of charter was filed with the secretary of state at Nashville about Aug. 11, 1893, and filed for record in the register's office of Shelby county about Aug. 15, 1893, but respondents deny the abstract so filed or registered was such as to comply with the laws aforesaid and require proof of what was actually done so the court can determine this question and the effect thereof, but respondents deny that the previous illegal contracts were in any way affected or legalized thereby. Respondents deny that the laws of Tennessee were ever complied with by the plaintiff, or that plaintiff was ever authorized to do business in Tennessee, and require proof from plaintiff on this subject. Further answering, respondents deny, upon information and belief, that the plaintiff is or was a "building and loan" institution. It is simply so in name, but not in fact, and is and was merely engaged in loaning money or in similar business, and is and was in no sense a building and loan company. But whether one or not, respondents deny that it complied with the laws of the State of Tennessee in reference to foreign corporations, and aver that the so called contracts were void as aforesaid. Further answering, respondents state that on May 9, 1895, the legislature of the State of Tennessee passed an act, which was approved May 10, 1895. A copy of this act is annexed hereto as Exhibit A, and the same is referred to and made a part hereof. This act undertook to validate contracts which had been made by foreign corporations in Tennessee after the passage of the act of M'ch 21, 1891, and M'ch 10, 1891, without complying with the requirements of those acts.

This act, however, did not refer to or attempt to modify or abrogate the act of Dec. 26, 1891, hereinbefore mentioned. Respondents claim and insist that this act of May 9, 1895, is void and that the previous acts attempted to be modified thereby are still in full force and that all contracts entered into in violation thereof are still void, the act of May 9, 1895, to the contrary notwithstanding. If respondents are mistaken in this however then they state and insist that the plaintiff never complied with the
21 requirements of the act of M'ch 26, 1891, and that if plaintiff be a building & loan institution and fall within that act it never had the right to transact business in Tennessee. And that all

of the transactions had with it are void and no liability of any kind exists against respondents. Further answering, respondents say that when the various transactions were had with the plaintiff that all of the same and all of the so called contracts were illegal and void and created no liability against respondents or either of them and the legislature of the State of Tennessee could not legally thereafter pass any act which would validate contracts which never existed and thus impose obligations on parties which they had never been under. The legislature was powerless to make contracts for parties. Respondents therefore insist that the said act of May 9, 1895, was and is void and that before its passage no liability existed against these respondents or either and no right to subject the property proceeded against and that such is still the case, the said — to the contrary notwithstanding. Respondents insist that the act of May 9, 1895, attempts to make contracts between plaintiff and respondents as plaintiff and respondent, H. L. Bedford, when by its own terms it shows no contract ever existed and it thus seeks to take away the money and property of respondent H. L. Bedford or respondents without due process of law contrary to and in violation of the constitution of the State of Tennessee and of the United States. The said act of May 9, 1895, is also void as it is in conflict with section 17 of article 24 of the constitution of the State of Tennessee which provides "No bill shall become a law which embraces more than one subject that subject to be expressed in the title; all acts which repeal, revive or amend former laws shall recite in their caption or otherwise the title or substance of the law repealed, revived or amended." The said act of May 9, 1895, is in violation otherwise of the said constitution of the State of Tennessee and of the United States and is void for this and other reasons. Further answering respondents state that the plaintiff however is not claiming the benefit of said act of May 9, 1895, but is proceeding herein on the theory that the contracts set up by it were and always had been valid which is here expressly denied. The said act of May 9, 1895, however in undertaking to validate contracts, referred to therein, or rather in undertaking to substitute other contracts in their place provides expressly that no mortgage or deed of trust executed to a foreign corporation shall be foreclosed whether under a power of sale or by judicial decree until 2 years after the passage of that act and the said act further provides that in settle-
22 ment under that act "not more than 6 per cent. on the amount actually received by the parties shall be collected but notes signed in this State and payable in this State but wholly secured by deeds of trust or mortgages on land in other States shall be enforced for the amount of interest permitted in the State where the land is located." Respondents state that the notes in question were signed in Shelby county, Tennessee, and were payable on their face in New York but that they were in fact contemplated to be paid to plaintiff's agents in Memphis, Tennessee, and those notes that were paid were paid to such agents in Memphis. Respondents insist and claim that the contracts, undertakings, notes and instruments relied on by plaintiff were and are yet illegal and void and that no liability what-

ever existed or now exists on account thereof. Respondents claim that plaintiff never complied with any of the requirements of any of the acts of the State of Tennessee hereinbefore mentioned and that the requirements of each and every act either had to be met before valid contracts could be made, or that such requirements of such act or acts as were applicable and necessary were not in fact complied with. Respondents insist as hereinbefore that the act of May 9, 1895, was void but even if valid it did not abrogate the act of M'ch 26, 1891, or undertake to validate contracts made where its requirements had not been complied with and that whether the act of May 9, 1895, is valid or not that plaintiff herein has no rights of any kind against these respondents or either if the plaintiff be a building & loan association in fact and the act of M'ch 26, 1891, applies. These various acts are submitted to the court in connection with the facts of this case and the court is asked to determine their application and effect. Further answering respondents say that if they should be mistaken in supposing that the act of May 9, 1895, is without validity, and in supposing that such act did not modify or abrogate the act of M'ch 26, 1891, if it applies and did not validate contracts made in contravention of this act that then the act of May 9, 1895, especially provides that no foreclosure by decree or otherwise can be had until 2 years after the passage of the act of May 9, 1895, and that "not more than 6 per cent. on the amount actually received by the party shall be collected."

Respondents set up and plead this act if it be valid and applicable as a complete defense herein and insist that this suit shall be dismissed as the two years have not expired and no right to a foreclosure or for other purposes now exists. If mistaken in this claim that the suit should be dismissed then
23 respondents insist that no decree shall be rendered during the 2 years or if rendered that it shall provide for no foreclosure earlier than the expiration of the 2 years referred to in said act. Respondents insist further that under this act no liability exists for the whole amount of the notes sued on but simply for the amount actually allowed by the act of May 9, 1895. If the court should be of the opinion that this act is valid and applies to this case then respondents insist that any decree which may be rendered shall conform to this act both in amount and as to the time of foreclosure and method thereof, and the said act, if valid, and applicable is plead as a complete defense herein. Respondents state further that the act of May 9, 1895, provides "but no alien corporation owning land in this State shall have the benefit of this stay of foreclosure proceedings." Respondents state that the plaintiff is and was an alien corporation and suggest to the court that it probably did own at the time of the transactions in question and does own land in Tennessee, and respondents insist that such being the case that the said act of May 9, 1895, excludes plaintiff from its benefits and this fact is set up and plead herein as a defense. Further answering respondents state and claim that while the notes executed by H. L. Bedford are dated May 1, 1891, that the money loaned to H. L. Bedford was not advanced to him until about June

18th or 20th, 1891, at which time the transaction was closed and the instrument claimed to be a mortgage was acknowledged and filed for record. That about June 18th or 20th, 1891, the plaintiff paid to H. L. Bedford the sum of $4,140, which was all he received and that the notes executed and secured by the instrument claimed to be a mortgage were given in consideration thereof. Respondent, H. L. Bedford, paid all of the notes except those in suit as they fell due and respondents claim and insist in any event all of such payments shall go as a full credit on the amount received, but respondents deny any liability whatever on any account as hereinbefore. Respondents deny any and all liability for any amount or anything but aver that if any liability exists at the utmost there could be no liability for any amount beyond the actual amounts received by H. L. Bedford and legal interest thereon and respondents aver and claim and insist that any excess in the notes over and above this sum was and is usury and this fact is set up and plead and if any liability is decreed to exist this usury is asked to be eliminated and full credit given for all payments of notes which were made, and as bearing on this question respondents state that all of the
24 transactions in question were Tennessee transactions and governed by Tennessee law, but that the legal rate of interest in Tennessee and in New York is the same, and all in the notes above the sum actually received and the legal rate of interest is usury, no matter which law applies. And now having fully answered respondents ask to be hence dismissed with costs.

FRAZER & HEATH, *Sol's.*

EXHIBIT A.

Senate Bill No. 170.

A bill to be entitled An act to postpone the foreclosure of certain mortgages or trust deeds and to validate contracts heretofore made by foreign corporations in this State, where such corporations failed to comply with the requirements of chapters 95 and 122 of the Acts of 1891 and chapter 31 of the Acts of 1877, providing that any such corporation desiring to own property or to carry on business in this State shall file a copy of its charter in the office of the secretary of state, and cause an abstract of the same to be recorded in the office of the register of each county in which such company desires to carry on business or own property.

SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, That the contracts of any foreign corporation created or organized by any State or government other than that of this State, that has heretofore engaged in business, made contracts or purchased property in this State after the passage of said chapters 95 and 122 of the Acts of 1891, without first complying with the provisions of the same, shall be as valid and binding in all respects as if a copy of its charter had been filed with the secretary of state, and an abstract of same filed in each county where such corporation carried on business or made contracts, provided that this sec-

tion shall apply only to such foreign corporations as have already in good faith complied with the provisions of said chapters 95 and 122 of the Acts of 1891, and chapter 31 of the Acts of 1877, by filing a copy of its charter with the secretary of state and recording abstracts thereof in each county in which such corporation carried on business or made contracts, or shall within four months after the passage of this act so file such charter and abstracts of same; provided, however, that no mortgage or deed of trust, executed to a foreign corporation, or to a trustee, to secure indebtedness to a foreign corporation upon real estate in this State, when such foreign corporation had not complied with the laws of this State at the time such mortgage or deed of trust was executed, shall be foreclosed either under a power of sale or judicial decree, until two years after the passage of this act, but no alien corporation owning land in the State shall have the benefit of this stay of foreclosure proceedings.

SEC. 2. Be it further enacted That in settlements made under this act not more than 6 per cent. on the amount actually received by the parties shall be collected, but notes signed in this State and payable in this State, but wholly secured by deed of trust or mortgages on land in other States, shall be enforceable for the amount of interest permitted in the State where the land is located.

SEC. 3. Be it further enacted, That this act take effect from and after its passage, the public welfare requiring it.

Passed May 9, 1895.

ERNEST PILLOW,
Speaker of the Senate.
JNO. A. TIPTON,
Speaker of the House of Representatives.

Approved May 10, 1895.
A true copy.

W. S. MORGAN,
Secretary of State.

UNITED STATES OF AMERICA,
Western District of Tennessee, } ss:

Personally appeared before me, W. B. Weisiger, D. clerk of the United States circuit court, H. L. Bedford, who made oath in due form of law that the statements made in the foregoing answer as of his own knowledge are true, and those made upon information he believes to be true.

H. L. BEDFORD.

Sworn to and subscribed before me, this 25 day of July, 1895.

W. B. WEISIGER, *D. Clerk.*

26 Circuit Court of the United States, Western District of Tennessee.

EASTERN BUILDING & LOAN ASSOCIATION
vs.
H. L. BEDFORD ET AL. } No. 487.

Complainant's Replication. Filed Sept. 10, 1895.

This repliant, saving and reserving to itself all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be answered by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in law to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove and humbly prays as in and by its said bill it hath already prayed.

BUCHANAN & MINOR,
For Complainant.

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its May term, A. D. 1895, at the United States court-house in the city of Memphis, in said district, on to wit: the 22d day of November, A. D. 1895, in the following cause, to wit:

EASTERN BUILDING & LOAN ASSOC'N, Plaintiff,
vs.
H. L. BEDFORD & WIFE, Defendant-. } No. 487.

27 For satisfactory reasons to the court appearing it is hereby ordered by the court that the above-entitled cause be and it is hereby continued to the next term of the court.

No. 487. Circuit court of the United States, western district of Tennessee. Eastern Building & Loan Assoc'n *vs.* H. L. Bedford and wife. Order of court. Entered and filed 22 day of Nov., A. D. 1895. John B. Clough, clerk.

Circuit Court of the United States, Western District of Tennessee.

EASTERN BUILDING & LOAN ASS'N
vs.
H. L. BEDFORD and WIFE. } No. 487.

Mortgage. Filed Dec. 6, 1895.

This indenture made this first day of May, in the year of our Lord one thousand eight hundred and ninety-one between H. L. Bedford and Lou M. Bedford his wife, of Bailey, Shelby Co., Tenn., parties of the first part and the Eastern Building and Loan Association, of Syracuse, N. Y., a body corporate party of the second part witnesseth, that the said parties of the first part in consideration of the sum of forty-six hundred dollars to them duly paid, the receipt whereof is hereby acknowledged, have sold and by these presents do grant and convey to the said party of the second part, its successors and assigns all that tract or parcel of land situate in the 10th civil district of the county of Shelby and State of Tennessee, bounded and described as follows: Beginning at the southwest corner of J. J. Bailey's "Mill place," thence north with the west line eighty-eight and one-half rods (88½) to center of M. & C. railroad; thence east along the center of said railroad fifty-four and one-quarter (54¼) rods; thence south parallel with the west line eighty (80) rods to said Bailey's south line; thence west along said south line to the place of beginning, counting thirty acres of land. Also that certain other tract or parcel of land situate in said district, county and State bounded and described as follows, viz: Beginning in the Winchester line at the east line of the John Mc. McSwin tract; thence west with the Winchester line three hundred and twenty (320) rods to John C. McLenner's northeast corner;
28 thence south with section line two hundred and sixty (260) rods; thence east one hundred and twenty (120) rods; thence north one hundred and twenty (120) rods; thence east two hundred (200) rods to the middle of Center Hill road; thence north with said road one hundred and forty (140) rods, to the place of beginning containing three hundred and seventy (370) acres of land, the above-described premises being the same premises conveyed to said H. L. Bedford by B. W. Louderdale and wife by deed, dated Feb'y 10, 1896, and recorded in vol. 166, page 406, of the records of said county. All rights of dower or homestead in said premises and the right to redeem the same or any part thereof in case of foreclosure and sale are hereby expressly relinquished and waived and said above-described premises are hereby conveyed with the appurtenances and all the estate, title and interest therein of the said parties of the first part. And the said H. L. Bedford does hereby covenant and agree to and with the party of the second part, its successors and assigns that at the time of the ensealing and delivering of these presents he is the lawful owner and is well seized in fee-simple of the premises above conveyed free and clear of all encumbrances of every name and nature, legal or equitable, and that the premises

thus conveyed in the quiet and peaceable possession of the said party of the second part its successors and assigns he will forever warrant and *define* against any person whomsoever lawfully claiming the same or any part thereof. This grant is intended as security for the payment of the sum of fifty-six hundred eighty-three and $\frac{8}{100}$ dollars, the same being the principal, interest and premium of a loan from said association which said loan was made pursuant to and accepted under the provistons of the by-laws of said association and which said by-laws have been read by the mortgagor H. L. Bedford and are made a part of this contract, which said loan is evidenced and secured to be paid by seventy-eight (78) certain promissory notes of even date herewith executed by the said H. L. Bedford payable to the said association at its office in Syracuse as follows: One of each of said notes to be paid on or before the last Saturday of each and every month until all of said seventy-eight notes are fully paid together with the interest and each of said notes after maturity at the rate of six (6) per cent. per annum payable semi-annually until said notes are fully paid. And the said mortgagor, H. L. Bedford for himself and his heirs, executors, administrators and assigns hereby covenants and agrees with the party of the second part, its successors and assigns to pay said princip*le*, interest and premiums at maturity and the interest accruing on said notes after maturity and all fines and penalties that may be imposed pursuant to the provisions of the constitution and by-laws of said association and also to keep and perform all promises and engagements made and entered into with said association according to the true intent and meaning of its by-laws and articles of association, and also to keep the buildings erected, and to be erected upon said premises insured against loss or damage by fire in an amount *are* in such manner and in such company as shall be m*u*st satisfactory to the party of the second part its successors or assigns so that the loss or losses if any shall be payable to it or them and from time to time when taken out issued on said premises which policies shall contain the best and most approved form of mortgage clause. And at once to make due proofs in case of loss and do all other things required, deliver over to it or them all policies and renewals thereof by said policies, and also pay and discharge when due and payable all taxes, assessments, rates and other charges now or hereafter levied or assessed upon said premiums and remove all adverse claims, clouds and encumbrances, also that until full payment of the money hereby secured nothing shall be done or suffered whereby said premises shall be diminished in value or any of said policies of insurance affected or vitiated.

In case default shall be made in effecting such insurance or in paying, discharging or removing such taxes, assessments rates, other charges, adverse claims, claims or encumbrances as aforesaid, it shall be lawful for said second party, its successors or assigns, to effect such insurance and pay such taxes, assessments, rates, other charges, adverse claims, choses or encumbrances and the amount so paid shall be a lien on said premises added to the amount secured by these presents and forthwith due and payable without demand,

with interest, and may be collected in the same manner as the principal sum hereby secured. And it is hereby expressly agreed by and between the parties to these presents that if default be made in the payment of any one of said notes or any part thereof as herein provided or in case of waste or non-payment of the taxes, assessments or impositions on said premises, or in case of neglect or refusal to keep the premises, insured as herein provided or in case the improvements thereon shall not be kept in good condition or repair, or in case of a breach of any of the covenants or agreements contained herein, or in case of failure to duly observe and keep the by-laws of the said association and in either or any of such cases, the whole of the said principal sum, interest, premiums, fines, dues and costs, shall at once become due and payable at the option of said association, its successors or assigns, and it shall be lawful for said association or its successors or assigns at any time thereafter to sell the said premises hereby granted, or any part thereof, in the manner prescribed by law and out of the moneys arising from such sale to retain the amount due and unpaid for principal, interest, premiums, fines, dues and costs thereof, taxes, assessments, impositions, insurance and other advances, together with the costs and charges of making such sale, and the overplus, if any there be, shall be paid by the party making such sale on demand to the said H. L. Bedford, or his heirs or assigns. And this conveyance shall be void if full payment of the aforesaid moneys, with principal and interest, be made as hereinbefore specified, and if the aforesaid covenants and each of them be well and truly kept and performed as herein specified and provided.

In witness whereof the parties of the first part have hereunto set their hands and seals the day and year first above written.

H. L. BEDFORD. [L. S.]
LOU M. BEDFORD. [L. S.]

STATE OF TENNESSEE, }
County of Shelby. }

Personally appeared before me B. J. F. Owen, a notary public in and for the State and county aforesaid, duly commissioned and qualified and acting, H. L. Bedford and Lou M. Bedford, the within-named bargainors, with whom I am personally acquainted and who acknowledged that they executed the within instrument for the purposes therein contained. And Lou M. Bedford, wife of the said H. L. Bedford, having appeared before me privately and apart from her said husband, the said Lou M. Bedford acknowledged the execution of the said instrument to have been done by her freely, voluntarily and understandingly, without compulsion or constraint from her said husband for the purposes therein expressed.

Witness my hand and seal of office this 18 day of June, 1891.

[L. S.]

B. J. F. OWEN,
Notary Public, Shelby County, Tennessee.

STATE OF TENNESSEE, }
Shelby County. }

Filed for registration June 20, 1891, at 2 o'clock p. m., and noted in Note Book No. 13, page 153, and was recorded June 23,
31 1891, in Record Book No. 207, page 321. Fee $3 50, paid.
E. A. EDMONDSON, *Register.*
A. Y. BOOTH, *D. R.*

Circuit Court of the United States, Western District of Tennessee.

EASTERN BUILDING & LOAN ASSOCIATION }
vs.
H. L. BEDFORD and WIFE. }

Deposition of D. A. Pierce. Filed Feb'y 20, 1896.

The deposition of D. A. Pierce, a witness for complainant in the above cause, taken on interrogatories, to be read at the trial of said cause. Notice and all formalities waived and the right to except to said deposition for matters of irrelevancy or incompetency is alone reserved by agreement of counsel. Buchanan & Minor, for association; Frazer & Heath, att'ys for defendants.

Int. 1. State your name, residence and business. If you have any connection with the complainant in this cause, please state what is its character and for how long it has existed.

STATE OF NEW YORK, }
Northern District, County of Onondaga, } *ss:*

D. A. Pierce, the witness called on behalf of the plaintiff herein, and residing at the city of Syracuse, N. Y., more than one hundred miles from the place where this cause is to be tried, being duly *continued* and sworn to tell the whole truth, and being carefully examined, deposes and says as follows:

1. To the first interrogatory he says: My name is D. A. Pierce; I reside in the city of Syracuse, N. Y., and am an attorney and counselor at law; I am the general attorney for the complainant and have been since April, 1890; I am also one of the directors of complainant and have been since May, 1894.

32 Int. 2. Are you familiar with the transactions between the complainant and the defendant, H. L. Bedford; if so, how came you to be so?

2. To the second interrogatory he says: I am familiar with the transactions between the complainant and the defendant, H. L. Bedford, by reason of the fact that as attorney for the complainant, I had charge of drawing the papers, attending to closing the loan with him, as well as attending all meetings of the directors of the complainant.

Int. 3. The answer of the defendant admits that the complainant, The Eastern Building & Loan Association, is a corporation duly incorporated under the laws of the State of New York. Will you

file as an exhibit to your deposition a certified copy of said company's charter and mark it "Exhibit A"?

3. To the third interrogatory he says: The paper that I hold in my hand is a certified copy of the charter or articles of incorporation of the complainant. Received in evidence and hereto annexed, marked "Exhibit A, A. P. Fowler, notary public."

Int. 4. I hand you here what purports to be an application by H. L. Bedford for shares in your association, dated January 23, 1891; please state whether it is really what it purports to be and whether it was received by the association from Bedford, and at what date. Do you know the signature of said Bedford and is that his signature which is attached to said application? Attach said application to this deposition as an exhibit; if you can't attach the original, say why, and attach a certified copy thereof.

4. To the fourth interrogatory he says: The instrument handed me purporting to be an application by H. L. Bedford for shares and membership in the Eastern Building & Loan Association of Syracuse, N. Y., and dated January 23, 1891, is the original instrument under which forty-six (46) shares of stock of the association were issued to said Bedford. It was received by the association by mail through H. B. Martin about the 26th day of February, 1891. I have never personally seen said Bedford write, and know his signature only from papers purporting to be executed by him and duly sworn to or acknowledged before a competent officer. The instrument which I hold in my hand is the original application for said shares and membership. Received in evidence and hereto attached marked "Exhibit B." A. P. Fowler, notary public.

Int. 5. Were any shares of complainant's stock issued to said Bedford? If so, was such issuance in pursuance of that application?

33 5. To the fifth interrogatory he says: Forty-six (46) — of complainant's stock were issued to said Bedford in pursuance of said application. "Exhibit B," A. P. Fowler, notary public.

Int. 5½. If you say such shares were issued to Bedford, state when they were issued and why? What became of such shares? Does Bedford still retain them? What disposal, if any, has he made of them?

5½. To the five and one-half interrogatory he says: Said shares were issued to said Bedford on the 26th day of January, 1891, by reason of said application and were dated February 2d, 1891, for the reason that all shares of stock issued by the association were issued in monthly series, and all stock issued after the 15th of any month were dated on the first business day of the succeeding month. After said certificate of shares were issued the same was mailed to said Bedford through J. H. T. Martin. He still retains them with the exception that they have been pledged by him to the complainant as security for the loan or advance thereon made him by the complainant.

Int. 6. I here hand you a certificate of stock, purporting to be a certificate of shares of stock in complainant association, issued to H. L. Bedford. Please state what it is; whether it is what it pur-

ports to be and whether it was issued at the time stated on its face. Was it ever accepted by the Bedford to whom it was issued? What is that printed on the back of the lower half of said certificate?

6. To the sixth interrogatory he says: The certificate of stock handed me purporting to be the certificate of shares of stock in the complainant association issued to H. L. Bedford is the original instrument issued by complainant association to H. L. Bedford, and is the instrument issued by said association showing that said Bedford is a shareholder therein and the owner and holder of forty-six (46) shares of installment stock and is what it purports to be. It was issued on the 26th day of January, 1891, under date of February 2d, 1891, for the reason stated in the answer to interrogatory 5½. It was accepted by said Bedford and the printing on the back of the lower half of said certificate are the by-laws of said association.

Int. 7. When the party to whom such a certificate is issued accepts the same, what effect as to his relations with the association does such acceptance work?

7. To the seventh interrogatory he says: When the party to whom such certificate is issued accepts the same he becomes a member and shareholder of the association and is charged with the pay-
34 ment of the duties called for in his certificate of shares in accordance therewith and as provided by the articles of incorporation and by-laws; has the right to vote on said shares at all meetings of the shareholders and has all the rights, and is charged with all of the duties of a shareholder in accordance with law, the articles of incorporation or charter, by-laws, rules and regulations of the association.

Int. 8. I here hand you what purports to be an application for a loan marked on back "Approved May 18, 1891." Is it what it purports to be? Is that Bedford's signature attached? If the same was an application for a loan, when was it in fact made and at what place?

8. To the eighth interrogatory he says: The instrument handed me purporting to be an application for a loan marked on back "Approved May 18, 1891," is what it purports to be, an application for a loan. The signature attached purports to be that of H. L. Bedford with which I am familiar only as above stated. The application for loan was made on or prior to May 5, 1891. It purports to have been made, filled out and signed on or prior to May 5, 1891, at Memphis, Tenn., and was received at the office of the complainant in the city of Syracuse, N. Y., and was acted upon and granted by the directors of complainant association at a regular meeting held at its offices in said city of Syracuse.

Int. 9. I also hand you what purports to be an "application for an advance to which is attached the affidavit of one H. L. Bedford. What is it in fact, and is that Bedford's signature which is attached?

9. To the ninth interrogatory he says: The instrument handed me purporting to be "an application for an advance," to which is attached the affidavit of one, H. L. Bedford, is the acceptance by the applicant of the action of the board of directors of the complainant

on the application made by said Bedford referred to in interrogatory 8, and an additional agreement by him to comply with the charter, by-laws and requirements of the board of directors of the complainant. The signature attached purports to be that of H. L. Bedford, with which I am familiar only as stated in answer to interrogatory four.

A. P. FOWLER,
Notary Public.

Int. 10. If you say that the two papers just mentioned are applications to the complainant association for a loan, state whether or not a loan was made to H. L. Bedford, in pursuance thereof. If such a loan was made, under what terms and conditions was it made?

35 10. To the tenth interrogatory he says, that a loan or ad--ance as the same is sometimes termed, was actually made to said Bedford in pursuance of the papers referred to in interrogatories 8 & 9, as well as by virtue of the board of directors of complainant on the paper referred to in interrogatory 9, and the papers referred to in interrogatories 4 & 6. Such loan was made on the agreement that the applicant would pay for the privilege of said advance a gross premium of ten per cent. at the time of the consummation of the loan, a monthly premium at the rate of five per cent. per annum and monthly interest at the rate of five per cent. per annum thereon, and also the dues on said shares so advanced or loaned upon, to wit, forty-six (46) until the maturity of said shares estimated at seventy-eight months, and for the purpose of securing said payment pledge said shares of stock as collateral to said loan, and execute notes for said monthly payments of both dues on said shares and interest and premium on said loan or advance, and further secure the payment of the same by a mortgage on unincumbered, approved real-estate security, all in conformity with the provision of the charter or articles of incorporation, by-laws, rules and regulations of the association.

Int. 11. The answer admits the execution of mortgage by defendant Bedford and wife, to complainant, but denies that it was delivered to complainant. Do you know the facts as to this, if so, what are they? And do you know of anything that affects the validity of such mortgage? And state here whether the mortgage already in evidence is the mortgage executed by defendants to the association and was delivered by defendants to the association, and who is the holder and legal owner of said mortgage?

11. To the eleventh interrogatory he says: The mortgage was delivered to the complainant. The facts are that after the application for loan had been granted by the board of directors of the complainant and the abstract of title to the real property offered as security had been received here the papers in the case were prepared by me and forwarded to Hon. J. W. Buchanan, at Memphis, Tenn., for execution by Bedford. Afterwards the abstract in the case was returned showing the execution and recordation of the mortgage, whereupon moneys in the case were forwarded and

shortly after that the mortgage was returned to the complainant by mail in its present condition, and the complainant has ever since been in possession thereof. I know of nothing that affects the validity of said mortgage. The mortgage I refer to is the only
36 one already in evidence, and is the mortgage executed by the defendants to the association and was delivered to it by them, and the association, the complainant herein, is now the holder and legal owner of said mortgage.

Int. 12. If defendant Bedford ever became a member of complainant association, did he become necessarily bound by all the by-laws, rules and regulations of the association or was there some way by which he might be excepted from their operation, either in whole or in part?

12. To the twelfth interrogatory he says: Bedford was necessarily bound by the by-laws, rules and regulations of the association on becoming a member, and there is no way by which he might be exempt from their operation either in whole or in part.

Int. 13. The answer admits the execution of the 78 notes as alleged in the bill but says that although they were made payable, on their face in New York, they were to be paid in Memphis and such was the contemplation of the parties. What are the facts as to this?

13. To the thirteenth interrogatory he says: The seventy-eight notes referred to were not to be paid in Memphis, and such was not the contemplation of the parties, on the contrary they were to be paid as appears on their face, at the office of complainant in Syracuse, N. Y.

Int. 14. And all of those notes which the association now holds due and lawfully payable to the association, do you know of any equities outstanding in defendants' favor or any reason why complainant is not entitled to collect them?

14. To the fourteenth interrogatory he says: All of the notes which the association now holds are due and payable, and I know of no equities outstanding in defendants' favor, or of any reason why complainant is not entitled to collect them.

Int. 15. At what time was the money loaned to Bedford, sent to him? And why was it sent at that time rather than at any other? State the facts as to the payment of this money to Bedford.

15. To the fifteenth interrogatory he says the money loaned to Bedford was sent him through H. B. Martin, of Memphis, Tenn., on the 8th day of July, 1891. After the notes had been returned here executed by him, together with the abstract of title showing
37 the execution and recordation of the mortgage, also the application for advance referred to in interrogatory 9, together with the affidavit thereto attached. It was sent to him at that time for the reason that no moneys were ever paid on loans until the papers in the case were executed, the mortgage placed of record and the title shown to be all right and free and clear of all liens other than those, if any, which were to be taken up and canceled from the proceeds of the loan, notwithstanding that as soon as the loan was granted the requisite moneys were set apart by the association to

meet the same. In other words as soon as the title to the real property offered as security was approved, the papers upon the loan were duly executed, including the recordation of the mortgage and the continuation of the abstract of title showing the same, and all of said papers with the exception of the mortgage, were received at the home office, the moneys on the loan were forwarded, and not till then. The moneys on this loan were paid by draft of the association on the Trust & Deposit Company, of Onondaga, dated July 8, 1891, payable to the order of H. L. Bedford, and numbered 866. Said draft was sent to him through H. B. Martin with instructions to deliver the same over when said certificate of shares issued to Bedford were delivered over by him (the same not having been previously delivered), he, Martin, being instructed at the same time, to have the attorney, Judge Buchanan, see that everything was all right in every particular before said check was delivered over. Said check was afterwards returned to the complainant by said Trust & Deposit Company canceled and paid. The instrument which I hold in my hand is said check and is hereby made a part of my deposition, marked "Exhibit F., A. P. Fowler, notary public."

Int. 16. The answer denies that the complainant is really a building and loan association. Will you state in detail the general manner in which the complainant does business; whether it is in fact a building and loan association, and whether it is recognized as such under the laws of the State of New York?

16. To the sixteenth interrogatory he says: The complainant is in fact a building and loan association, and is so recognized under the laws of the State of New York. It is incorporated as appears from its charter, under chap. 122 of the Laws of 1851 of said State. Its capital consists of the dues paid in by its members on their certificates of shares; it has no income except from the payments on shares by members and the interest and premium on loans with the penalties for non-payments; it makes no loans to persons other
38 than members, and only on real-estate security or the security of moneys actually paid in in dues on shares; and it transacts no business other than that of issuing certificates of shares to persons applying for the same; collects the dues payable on such certificates and loans the moneys received therefrom as well as from payments on loans to members; its object being to aid members in acquiring homes and paying off encumbrances upon real property by advances or loans on shares held by its members, and for accumulating a fund to be returned to members who do not borrow when the dues paid on their shares together with the earnings thereon amount to the sum of one hundred dollars per share. It does no banking business and strictly confines its business to that I have specified.

Int. 17. Did defendant Bedford accept the money loaned to him; and if so, did he accept it as loaned in pursuance of the provisions of the by-laws, rules and regulations of the association; did he at any time protest against anything done on the way in which it was done, or deny that he was a member of the association? Did he raise any objections at all at any time, if so, what were they?

17. To the seventeenth interrogatory he says: The defendant, H. L. Bedford, accepted the money loaned to him in pursuance of the by-laws, rules and regulations of the association. No protest was ever received from him against anything that was done or the way in which it was done, nor did he deny that he was a member of the association, nor did he raise any objections in relation to the loan at any time.

[L. S.] A. P. FOWLER,
Notary Public.

Int. 18. When the application of Bedford for a loan, if any such application was in fact made, was made, what was done by the association? Was any meeting of the complainant's board of directors held; if so, what was done thereat? And if you have not already done so in response to a previous question, please state here the proceeding had when an application is made for a loan; and whether this usual mode of proceeding was followed in defendant's case.

18. To the eighteenth interrogatory he says: When the application of Bedford for a loan was received by the association at its home office the same was placed in the hands of the loan committee for examination and report to the board of directors. The application and report of the committee was then brought before the
39 board of directors of the association at a regular meeting for its action thereon. A regular meeting of the complanant's board of directors was held on the 18" day of May, 1891, at which meeting the application of Bedford for a loan and the loan committee's report were presented, and upon favorable recommendation of the committee the loan or advance asked for in the application was granted at said meeting. When an application was made for a loan at the time Bedford's application was made, after it had been made in proper form, a report by appraisers acquainted with the property was required to be made and sworn to in the form appearing upon the application of Bedford, after which the application and appraiser's report were forwarded to the association at the home office and was then placed in the hands of the loan committee for report to the board of directors; the loan committee investigating both as to whether the applicant was a member in good standing and had the requisite number of shares of the requisite age, to wit, at least three months old, and whether the real property offered as security was sufficient. The application for a loan, with *with* the committee's report, was then presented to the board of directors at a meeting thereof for its action on the application and the report of the committee. If the application for a loan was granted the same was then placed in my hands as attorney to examine the title and to attend to the drawing and execution of the papers and the closing of the loan. If the title was satisfactory the papers in the case were prepared by me and forwarded to the local attorney with instructions to have the papers properly executed by the applicant, the mortgage recorded and the abstract extended down to and including the time of the recordation thereof, also attend to any matters per-

taining to the title, if any, needing correction or investigation, and then certify as to his opinion upon the abstract, and thereupon to return all of the papers upon the loan, including the certificate of shares and abstract of title extended, with the exception of the mortgage (which would be in course of recordation).

After said papers were received here at the home office of the association, if everything was found to be all right, the moneys upon the loan were forwarded by a check of the association payable to the order of the applicant, with instructions to be delivered over when any liens, if any, appearing upon the abstract ahead of the mortgage to the association were duly discharged of record, or when any other matters, if any, were required to be done to give the association the first lien upon the property offered as security and perfecting all papers and matters securing the loan. This was the usual mode of procedure followed in the making and closing of a loan, and was the mode of procedure followed in the defendant's case.

Int. 19. State whether the loan to Bedford was made in conformity with the rules, regulations and by-laws of the association.

19. To the nineteenth interrogatory he says, that the loan to Bedford was made in conformity with the rules, regulations and by-laws of the association.

Int. 20. If you know of any other facts material to this case, will you state them as your answer to this interrogatory?

20. To the twentieth interrogatory he says: At the time the application for loan was made in this case by Bedford, J. H. T. Martin and H. B. Martin were local solicitors for the association, having the right to receive applications for membership like the application referred to in interrogatory 4. They had no right to write stock and hence it was their duty to forward the applications for membership and shares, or have the same forwarded to the association at the home office. If the same were accepted the stock was written and either mailed to the applicant directly or through the Martins. They had no authority to bind the association in any way, being simply soliciting agents, and had no authority to make loans or enter into any agreement in relation thereto. An application for loan in their territory, after the same had been passed upon by the appraisers, could only be granted or rejected by the directors of the association at its home office. However, the applications for loans were usually forwarded by them or one of them, as was the fact in this case, and the correspondence in relation thereto came from the applicant through them, and the correspondence by the association in relation thereto was addressed to them or to the local attorney, when the matter of execution of the papers upon the loan was under consideration and the moneys on the loan, after the papers had been duly executed and delivered, and received here at the home office, were forwarded to the applicant through them by check, payable to the order of the applicant, with instructions. Their entire compensation consisted of a commission on stock written through them in the association. As will be seen from the foregoing, they were simply soliciting agents, work-

ing upon a commission basis, and having no power to enter into contracts or to incur any obligations for or in be-
41 half of the association. An application for stock was accepted or rejected by the officers at the home office, after it had been received here; likewise an application for loan. In each town outside of the association where it had any considerable business, as was the case in Memphis, Tenn., there was established under the by-laws what is known as a local board, having officers as shown by the by-laws. The purpose of the same was to foster the business of the association in the particular locality and to afford the members of the association connected therewith a means of communication with the association at the home office and to facilitate the transaction of any business which they have with the association. It was established as a matter of convenience for the local members. The officers of the local board, however, had no authority to incur any obligations for or in behalf of the association, and as I have said above, stock could only be issued to persons desiring same by officers of the home office, and loans could only be granted to members desiring the same by the officers and directors at the home office. In the local board there was what is known as a secretary and treasurer, through whom, if the members desired, they could make their remittances of dues or interest and premium on loans to the home office, but it was expressly provided by the by-laws that all payments by the members should be made to the secretary at the home office; and if they chose to remit through the local treasurer it should be through him as agent for themselves, and not for the association. The instrument which I hold in my hand marked "Exhibit G, A. P. Fowler, notary public," is the application by various persons of Memphis for a local board charter for that city, from which it will also be seen that it was the express understanding and agreement that the local board treasurer remitted as agent for the members who made payments to him, and not as agent for the association. At the time the loan in question was made to Bedford and at the time the certificate of shares was issued to him, and for some time thereafter, I. H. T. Martin was the local secretary and treasurer of the Memphis local board. After the consummation of the loan to Bedford the monthly payments represented by the notes executed by him and falling due for a few months subsequent thereto, were sent to J. H. T. Martin for collection. After December, 1891, however, no notes were ever forwarded until the moneys thereon had actually been received at this office.

42 The instrument on the back of the certificate of shares in this case, "Exhibit C" commencing with the words "The within-mentioned shares of stock in the Eastern Building & Loan Association of Syracuse, N. Y., etc.," signed H. L. Bedford (seal) and "dated at Memphis, 7, 16, 1891. Witness, J. H. T. Martin," is simply the form used at the time for pledging the stock as collateral to the loan in compliance with sec. 3 of article XIV of the by-laws printed on the back of said certificate. All shares of stock in the association were written on what is known as the serial plan. All

stock in each series being dated at the same time and treated as a unit in the computation of earnings, each shareholder being entitled to his proportion of the earnings of said series and required to pay his like proportion of dues on his shares. The earnings on the shares were computed from the date of the certificate by the month. Fractions of a month on the serial plan were not and are not considered. All applications for shares received on or prior to the middle of the month were dated on the first day of that month. When, therefore, a loan was granted upon an application in any month, the moneys so agreed to be loaned were at once set aside to the credit of the applicant, and hence all papers upon loans granted in any month were dated in that month, irrespective of the time when the applicant placed himself in position to receive the same by execution and delivery of the requisite papers upon the loan and the perfecting of the real-estate security given therefor. The moneys on the loan being paid to the applicant after the same was granted, just as soon as he became entitled thereto by compliance with the by-laws, rules and regulations of the association.

Int. 21. The various papers herein mentioned, the application for shares, application for advance, the stock certificate, etc., will you please make them exhibits, properly marked, to this deposition.

BUCHANAN & MINOR,
For Complainant Association.

21. To the twenty-first interrogatory he says: The various papers mentioned in my deposition, to wit, the charter of the association, the application for shares by H. L. Bedford, the certificate of forty-six shares issued to H. L. Bedford, the application for loan by H. L. Bedford, and the report of the loan committee thereto attached, the application for advance to which is attached the affidavit of H. L. Bedford, dated June 20, 1891; the check given in payment of the loan and the application of various persons of Memphis for a local board charter, marked respectively:

43 Exhibit A—A. P. Fowler, notary public.
Exhibit B—A. P. Fowler, notary public.
Exhibit C—A. P. Fowler, notary public.
Exhibit D—A. P. Fowler, notary public.
Exhibit E—A. P. Fowler, notary public.
Exhibit F—A. P. Fowler, notary public.
Exhibit G—A. P. Fowler, notary public.

I hereby make and annex to this deposition as a part thereof.

[SEAL.] A. P. FOWLER,
Notary Public.

Cross-interrogatories for Deposition of D. A. Pierce, All Exceptions for Incompetency and Irrelevancy of Testimony Being Reserved.

Int. 1. If you should say you are familiar with the transactions claimed to have been had between the plaintiff, The Eastern Building & Loan Association, and the defendant, H. L. Bedford, then please state whether you have a personal knowledge thereof by

having personally transacted such matters with H. L. Bedford or whether you know of the same simply from having seen papers purporting to have been signed or executed by H. L. Bedford or having heard others speak of such matters.

1. To the first cross-interrogatory he says: My knowledge of the transactions of the complainant with H. L. Bedford is derived and consists of my being familiar with the various papers referred to by me in my direct examination, received by the association and purporting to be signed by H. L. Bedford, and also by virtue of my personal attendance at the meeting of the directors when his application for loan was approved, my preparation of the papers upon the loan in this office, the sending of the check by me payable to his order, in full of the loan and the return of the same canceled and paid by the bank upon which it was drawn, and not by reason of having transacted any of such matters with him personally.

Cross-int. 2. Did you ever see H. L. Bedford personally about any of the matters in question? If so, when, where and what was done —specify particularly.

2. To the second cross-interrogatory he says: I have never seen H. L. Bedford personally to my knowledge.

Cross-int. 3. Is it not a fact that at and before and during the transaction of the various matters claimed to have taken
44 place between the Eastern Building & Loan Association and H. L. Bedford that the Eastern Building & Loan Association had an agency at Memphis, Tennessee, and that all the said transactions were had at Memphis, Tennessee, by H. L. Bedford with said agency at Memphis, Tennessee, and not by him directly with the Eastern Building & Loan Association at Syracuse, New York?

3. To the third cross-interrogatory he says, it is a fact, as I have stated in answer to interrogatory No 20, on my direct examination, that the Eastern Building & Loan Association had a special agency at Memphis, Tenn., but it is not a fact that all of such transactions were had at Memphis, Tenn., by H. L. Bedford with said agency at Memphis, Tenn., though it is doubtless a fact that whatever transactions he had with the Eastern Building & Loan Association, so far as applying for shares and obtaining a loan thereon, was transmitted to the association through either J. H. T. Martin, H. B. Martin or Hon. J. W. Buchanan.

Cross-int. 4. If H. L. Bedford ever had any of the transactions in question with the Eastern Building & Loan Association directly and not through its Memphis agency then please specify definitely and particularly what it was and how you know as to the same.

4. To the fourth cross-interrogatory he says, all of the transactions had with said H. L. Bedford, assuming that his signature is attached to the various papers referred to in my direct examination as well as the notes and mortgages referred to in this action, were had between him on the one hand and the officers of the association at the home office on the other, though all of said papers I believe purporting to be signed by H. L. Bedford were actually sent to the officers of the association at the home office by either said J. H. T.

Martin, H. B. Martin or J. W. Buchanan. All payments of dues on his shares and interest and premium on his loan were made to the association either by himself or his agent, with the exception possibly of some notes falling due on and prior to December, 1891, which were sent by the officers of the association from the home office to J. H. T. Martin for collection.

Cross-int. 5. Is it not a fact that each and every paper purporting to have been signed by H. L. Bedford and referred to by you whether the same be a mortgage or deed of trust, notes or other papers, were received by the Eastern Building & Loan Association from its Memphis agency and not received directly from H. L. Bedford?

5. To the fifth cross-interrogatory he says, I believe it is a fact that all of the papers referred to by me and purporting to have been signed by H. L. Bedford, were received by mail from H. B. Martin.

Cross-int. 6. Is it not a fact that J. H. T. Martin was the agent of the Eastern Building & Loan Association at Memphis, Tennessee, and that all the transactions claimed to have been had by H. L. Bedford with the Eastern Building & Loan Association were had by him with said Martin for said association, and not by him (Bedford) with said association directly. Was not and is not this your information?

6. To the sixth cross interrogatory he says, it is a fact that J. H. T. Martin was an agent of the Eastern Building & Loan Association of Memphis, Tenn., as stated in answer to interrogatory 20 in my direct examination, but it is not a fact that all of the transactions claimed to have been had by H. L. Bedford with the Eastern Building & Loan Association were had by him with said Martin for said association, and not by him, Bedford, with said association directly. This was not and is not my information.

Cross-int. 7. It appears that various of the notes claimed to have been executed by H. L. Bedford and secured by the mortgage or deed of trust mentioned in this proceeding were paid. Please state when such notes were paid and how much were paid—that is the amount thereof. Is it not a fact that each note so paid was sent to Memphis, Tennessee, for payment and was paid to the Memphis agency of said Eastern Building & Loan Association, and that the Eastern Building & Loan Association received such sums from said agency?

7. To the seventh cross-interrogatory he says, the notes claimed to have been executed by Bedford, falling due on the last Saturday of May, 1891, and the one falling due each succeeding month thereafter down to and including the last Saturday in May, 1893, twenty-five in all, each amounting to the sum of $72.86, were paid together with a fine of $9.20, for default in the payment of the February, 1892, note. The dues on the shares falling due on the last Saturday of May, 1891, amounting to $34.50, and embraced in the May note, were paid June 6, 1891, by remittance through the local treasurer. The May and June notes were forwarded for collection to H. B. Martin and the interest and premium on the May note (the dues embraced therein having been previously paid) and

the June note in full, were received at this office on the 6th of August, 1891, and at the same time payment of the July, 1891 note. I have no information as to when the moneys for the aforesaid
46 payments were placed in the hands of H. B. or J. H. T. Martin. The notes falling due on the last Saturday of August, September, October, November, and December, '91, respectively, were forwarded to J. H. T. Martin for collection, and so far as I am able to state the moneys for said payments appear to have been handed to said Martin at or before the time said notes fell due, the remittance for the August note being received at the home office September 11th, '91; for the September note, October 5th, '91; for October note November 9th, '91; for the November note December 21, '91; and for the December note December 31, '91. No notes after December were forwarded for collection and all notes accruing after that time were only canceled and forwarded after the payment had been actually made to the association by the member or borrower personally, or by him through the treasurer of his local board.

Payment of January, '92, note was made to the association February 4th, '92; payment of the February and March, '92, notes were made to the association March 31, '92; $9.20 being paid by way of fines on the February, '92 note for default in payment. Payment of April '92 note was made to the association May 16, '92; payment of the May, '92 note was made June 7th, '92, to the association; payment of the June '92 note was made to the association July 11th, '92; the July '92 note was paid to the association August 3d, 1892; the August note, September 17th, 1892; the September note, October 14th, 1892; the October note November 15th, 1892; the November note December 8th, 1892; the December note, January 11th, 1893; the January, 1893 note, February 10th, 1893; the February, 1893 note, March 9th, 1893; the March, 1893 note, April 12th, 1893; the April, 1893 note, May 10th, 1893; and the May, 1893 note June 16th, 1893. It is not a fact that each note so paid was sent to Memphis, Tenn., for payment and paid to the Memphis agency of said Eastern Building & Loan Association, and that the Eastern Building & Loan Association received such sums from said agency.

Cross-int. 8. In direct interrogatory number 4, your attention has been called to what purports to be an application for shares by H. L. Bedford dated Jan'y 23d, 1891. Please produce with your deposition the original paper and not simply a copy thereof, was said original paper received by the Eastern Building & Loan Association from H. L. Bedford directly or was it received by the Eastern Building & Loan Association from its Memphis agency? If you should say such paper was received from H. L. Bedford directly and not through the Memphis agency, state how you know such to be the fact.

47 8. To the eighth cross-interrogatory he says, the original application for shares purporting to be that of H. L. Bedford, dated January 23d, 1891, is attached to my deposition and marked "Exhibit B, A. P. Fowler, notary public." Said application was received by the Eastern Building & Loan Association by

mail from H. B. Martin, who at the time was one of the soliciting agents of the association at Memphis, Tenn.

Cross-int. 9. In the 6th direct interrogatory you are asked as to a certain certificate of stock in said Eastern Building & Loan Association. Please produce the original, and not simply a copy of any such certificate. If you should say that any such certificate was issued by the Eastern Building and Loan Association at any particular date, then please state how you know such to be the fact?

9. To the ninth cross-interrogatory he says the original certificate of stock in the Eastern Building and Loan Association referred to is produced and attached to my deposition and marked "Exhibit C, A. P. Fowler, notary public." I know of the date of the issuance of said certificate from the entry made on the application for shares and from the time of mailing said certificate.

Cross-int. 10. You are asked in the 6th direct interrogatory whether H. L. Bedford ever accepted the said certificate of stock as to which you are questioned? If you should say he did accept the same, then please state how you know such to be the fact? Were you present when he accepted the same, and if so, when was it, and where was it, and who was present when such acceptence was made, and how was such acceptance made?

10. To the tenth cross-interrogatory he says: I know of the acceptance of said certificate by said Bedford through the papers, purporting to be executed by him in connection with the loan, including what purports to be his signature upon the back of the certificate of shares itself, and payment purporting to be made by him by way of dues thereon prior to the consummation of said loan as well as thereafter, also payment of interest and premium on said loan after its consummation, which, together with the dues on said shares constitute the monthly payment, falling due thereon, and evidenced by said notes. I never saw said Bedford personally to my knowledge.

Cross-int. 11. In direct interrogatory 6 you are asked "what is that printed on the back of the lower half of said certificate"? I suppose this question refers to the following, which I copy from said paper, viz: "The within-mentioned shares of stock in
48 the Eastern Building and Loan Association of Syracuse, N. Y., are hereby withdrawn, and I have this day received the sum of forty-six hundred dollars, in full of the amount due me by reason of such withdrawal. Dated at Memphis, 7, 16, 1891. H. L. Bedford. (Seal.) Witness, J. H. T. Martin." Does not the above date in said paper, 7, 16, 1891, mean July 16, 1891? The said certificate of stock purports to be dated February 2d, 1891, where was the said certificate of stock from said date February 2, 1891, up to the date July 16, 1891, when it is claimed that H. L. Bedford executed the above receipt for $4,600, and where has it been since July 16, 1891? In whose possession was said certificate of stock during all that period? If you should undertake to say that the said certificate of stock was in the possession of H. L. Bedford during the period aforesaid, or at any time, then please state how you know

such to be the fact? Did you see it in his possession or how do you know it to be the fact?

11. To the eleventh cross-interrogatory he says the printed portion on the back of the lower half of the certificate is a copy of the by-laws of the association in force at the time said certificate was issued. The figures 7, 16, 1891, at the end of "the within-mentioned shares of stock, etc.," on the back of said certificate, I suppose means July 16, 1891. I have no personal knowledge of who had possession of said certificate from February 2d, 1891, to July 16, 1891, except that I know that it was not in the possession of the association, and I know this by virtue of having had charge of the loan in this case, and the fact that it was actually received by me through the mails from Memphis, a few days after July 16th, 1891, since which time it has been in the possession of the complainant.

Cross-int. 12. When was the certificate of stock sent to Memphis, Tennessee, by the Eastern Building & Loan Association and to whom was it sent? Was it sent to the Memphis agency of said association or J. H. T. Martin, such agent, or was it sent directly to H. L. Bedford? If sent directly to the said Bedford then please give a copy of the letter which accompanied the same.

12. To the twelfth cross-interrogatory he says: Said certificate of stock was sent by the Eastern Building & Loan Association to J. H. T. Martin, No. 38 Madison street, Memphis, Tenn., by mail, on the 27th day of January, 1891.

Cross-int. 13. The said receipt above copied and dated "Memphis, 7, 16, 1891," purports to show that H. L. Bedford received $4,600 of the Eastern Building & Loan Association. Is it not a fact
49 that H. L. Bedford was not paid $4,600 but was paid a much less sum? What was the sum actually paid and what does the difference between such sum and the $4,600 in the receipt represent?

13. To the thirteenth cross-interrogatory he says: The sum actually paid H. L. Bedford on the loan was $4,140, and the difference between this sum and $4,600 is the gross premium of ten per cent., bid and agreed to be paid by him and deducted from the loan in consideration of his having obtained the preference therefor.

Cross-int. 14. In direct interrogatory number 8 you are asked as to an application for a loan, "marked on back approved May 18, 1891." Please produce the original application and also the original paper now pinned to the same and headed "Report of loan committee." The said application for a loan purports to have been sworn to by H. L. Bedford March 20, 1891, and upon the same paper appears an "appraisers' report" purporting to have been sworn to May 5th, 1891, by Geo. E. Rudisell, C. B. Galloway and J. H. T. Martin. Is it not a fact that the said application for a loan was not turned over to or received by the Eastern Building & Loan Association until after the appraisers' report of May 5, 1891? When were these papers (the application for a loan and appraisers' report attached thereto and the "report of loan committee") received by the Eastern Building & Loan Association and were they received

from H. L. Bedford directly or from the Memphis agency of the Eastern Building & Loan Association? If you should say they were received directly from H. L. Bedford by the Eastern Building and Loan Association state how you know such to be the fact?

14. To the fourteenth cross-interrogatory he says: The original application for loan and report of loan committee are attached to and made a part of my deposition and marked "Exhibit D, A. P. Fowler, notary public." Said application for loan was not received by the Eastern Building and Loan Association until after May 5th, 1891. Said application for loan and appraisers' report attached were received by the association on the 12th day of May, 1891, by mail from H. B. Martin. "The report of loan committee" attached thereto, was made at the home office of the association under directions and for the convenience of its board of directors.

Cross-int. 15. Please state what was the method pursued by the Eastern Building and Loan Association at Memphis, Tennessee, at and during the period of time when the transactions with H. L. Bedford are claimed to have taken place? Did not said association have a local board of organization of some kind at Memphis,
50 Tennessee? How were its "appraisers" and its "loan committees" appointed at Memphis, and how was such association represented in carrying on its business at Memphis, Tennessee? State fully.

15. To the fifteenth cross-interrogatory he says: The method pursued by the Eastern Building and Loan Association at Memphis, at the time when Bedford is claimed to have applied for shares and a loan, and consummated the same is, as I have stated, in answer to interrogatory 20, of my direct examination. There was a local board of the association at Memphis at the time with officers and directors as specified in the by-laws, copy of which is printed on the back of the certificate of shares in this case. The appraisers were appointed by the local board, whose duty it was to certify as to the value of the property offered as security on all applications for loan. The local board had no loan committee. The business of the association consisted in issuing its shares of stock to persons desiring the same and of making loans or advances thereon to such as desired the same after the shares were in force three months, in accordance with the by-laws, rules and regulations of the association. At the time in question J. H. T. Martin and H. B. Martin were authorized to solicit applications for shares, which, when said applications were received were either forwarded directly by the applicant or through said Martins to the association at its home office, for its acceptance or rejection. If accepted, certificates of shares were issued in accordance with the application in form like the certificate in this case, and either forwarded to the applicant directly, or to the applicant through said Martins; and the only compensation they received for doing this work or attending to any matters pertaining to the consummation of a loan, was a fixed commission on the shares so written by them.

After the certificate of shares was issued certain monthly dues were payable, amounting to 75 cents per share, on the last Saturday

in each month, which dues, as well as all other payments owing by a member were by virtue of the provisions of the by-laws payable to the secretary of the association at the home office. If a member saw fit under the by-laws he could make his remittance as aforesaid through the treasurer of his local board, acting as agent for him. If a loan was desired by a member his application was made out upon a printed form furnished, was brought to the attention of the local board, and the appraisers made their report thereon; after which it was transmitted to the association at the
51 home office, where it was passed upon and granted or rejected, as the case might be. If granted, an abstract of title was required to be furnished, and if approved, the papers in the case were prepared by the general attorney of the association at its home office and forwarded to the local attorney for execution, with such instructions as the circumstances in each case might require. After the papers upon the loan had been executed as required the mortgage given as security on the proposed loan was required to be placed upon record, and the abstract of title continued down to and including the date of the recordation thereof after which the abstract, showing the recordation of the mortgage, together with the attorney's opinion, the notes, application for advance, affidavit in relation to title and certificate of shares, were required to be forwarded to the home office. If found satisfactory by the general attorney the money on the loan or advance, less a gross premium of ten per cent. agreed to be paid, among other things, for the preference and privilege of advance or loan on the shares, was forwarded to the applicant through the local soliciting agent of the association or the local attorney by draft of the association, payable to the order of the applicant, with instructions to pay over the same after any liens, if any, existing upon the premises had been canceled or paid, or other matters pertaining to the perfection of the loan had been complied with. The certificate of shares held by the applicant, and upon which he obtained his advance, were by virtue of the by-laws pledged as security for the payment of the loan or advance thereon, and the writing on the back of the certificate in this case referred to, and copied in the cross-interrogatory No. 11 was the form used at the time for the purpose of pledging said shares in compliance with section 3, article XIV of the by-laws. After the consummation of the loan the member or borrower was required by virtue of the provision of the by-laws, and the terms of his notes and mortgage to make the payments on his loan and the dues on his shares at the home office of the association, remitting directly therefor or through the local treasurer as his agent.

Cross-int. 16. The said application for a loan has endorsed on the back thereof "Approved May 18, 1891." Please state how this approval was made? Give a copy from the minute books of the Eastern Building and Loan Association, showing such approval and the date thereof?

16. To the sixteenth cross-interrogatory he says: The ap-
52 proval of the application for loan in question was made by virtue of the action of the board of directors of the association at an adjourned regular meeting, held at its office, in the Kirk block, in Syracuse, N. Y., on the 18th day of May, 1891. I have attached to this deposition a true extract of the minutes of said board, showing such approval, and the same is marked "Exhibit H, A. P. Fowler, notary public."

Cross-int. 17. It appears that the mortgage claimed to have been given by H. L. Bedford is dated May 1st, 1891. Is it not a fact that this mortgage and the notes purporting to be secured thereby, while dated May 1st, 1891, were not in fact executed until after the appraisers' report of May 5, 1891? When were such papers so executed, if you know, and when were the mortgage and notes delivered to the Eastern Building and Loan Association, or its Memphis agency?

17. To the seventeenth cross-interrogatory he says: The notes and mortgage referred to were not executed until after May 5th, 1891. They were executed between May 5, 1891, and June 29th, 1891. The notes received on the 2d of July, 1891. The mortgage recorded was received on the 20th of July, 1891. The notes were received by mail from H. B. Martin. I cannot state whether the mortgage was received by mail through him or from the recorder direct.

Cross-int. 18. If you should state that it was not in the contemplation of the parties to have the notes paid in Memphis, Tennessee, then please state how you know such to be the fact; were you present when the matter or contract was concluded by H. L. Bedford and how do you know what the parties had in contemplation? Is it not a fact that all the notes that were paid were sent to Memphis, Tennessee, for payment, and if so, why was that the case if the parties contemplated having the notes paid in New York? Did not the Eastern Building and Loan Association actually get every dollar that was paid from its Memphis agency, where the payments had been made?

18. To the eighteenth cross-interrogatory he says: I know that it was not in contemplation of the parties that the notes should be paid in Memphis, Tenn., for the reason that the papers upon the loan expressly provided to the contrary.

The contract for the loan to Bedford was concluded at the home office of the association, at the meeting of its board of directors, that I have heretofore referred to, and I was present at that
53 meeting. No one in Memphis had any authority to make any loans or enter into any contracts in relation thereto in behalf of the association. It is not a fact that all the notes that were paid were sent to Memphis, Tenn., for payment, on the contrary, most of the notes were only canceled and forwarded to Bedford either directly or through the treasurer or collector of the local board after the moneys in payment had been actually received at the home office. The association did not get every dollar that was paid from its Memphis agency where the payments had been made. It is a fact, however, I believe, that the payments were received

through J. H. T. Martin, and his successor as local treasurer, but as agent for Bedford.

Cross-int. 19. Were you present when H. L. Bedford got the money, and how do you know how he accepted the same?

Objected to by counsel for complainant, because answer admits acceptance of money as charged in the bill of complaint.

B. & M.

19. To the nineteenth cross-interrogatory he says: I was not present when Bedford got the money, but I know of his acceptance of the same through the return of the check drawn by the association to his order for the amount of the loan, less the gross premium of 10 per cent., and the return of said check to the association canceled and paid, and appearing to be endorsed by him, which check also shows that it was forwarded for collection through the Union and Planters' Bank of Memphis.

Cross-int. 20. In answering direct interrogatory 18th or in stating anything was done by the Eastern Building and Loan Association, please give copies from its minute books showing such facts.

20. To the twentieth cross-interrogatory, he says: The copy of the minutes in relation to the action of the board of directors, "Exhibit H, A. P. Fowler, notary public," is attached, and under the by-laws no other action of the board was necessary to be taken, so far as the same relates to the matters preceding the granting of the loan as well as the closing of the same.

Cross-int. 21. In answering the direct interrogatory, if you should undertake to state what the law is on any subject, or to state defendants are liable, then please state whether you are a lawyer or not and give the sources of your information, and are you referring to law of the State of New York or of the State of Tennessee?

21. To the twenty-first cross interrogatory he says: I am a
54 lawyer and my information is derived from chapter 122 of the Laws of 1851, of the laws of the State of New York, from my knowledge of the charter or articles of incorporation and by-laws of the association; the terms and conditions of the certificate of shares issued to Bedford; the papers upon the loan; the payments made by him therein, as well as upon the certificate of shares prior to the consummation of the loan, as well as my knowledge of the rights and liabilities of members and shareholders in building and loan associations, derived in addition to the sources aforesaid from text-books and authorities on said subject, and I refer to the law of the State of New York as well as to that of the State of Tennessee, so far as applicable.

Cross-int. 22. The "by-laws" of the Eastern Building and Loan Association appear to be printed on the "certificate of shares" which you have been called upon to produce with your deposition. Please state whether those printed by-laws thereon are a complete and correct copy of all the by-laws of said association in force when the transactions with H. L. Bedford are claimed to have been had. If not, produce with your deposition a full and complete and correct copy of all such by-laws then in force?

22. To the twenty-second cross interrogatory he says: The by-laws printed on the back of the certificate of shares are a complete and correct copy of the by-laws of the association, in force when the transactions with Bedford are claimed to have been had.

Cross-int. 23. Please state whether the Eastern Building and Loan Association at the time of the transactions with H. L. Bedford, or at any time since then, or now, own any land in the State of Tennessee? If so, when did such association acquire the same?

FRASER & HEATH,
Solicitors for Defendant.

Objected to by counsel for complainant as irrelevant.

B. & N.

23. To the twenty-third cross-interrogatory he says: The Eastern Building and Loan Association did not own any land in the State of Tennessee at the time of the transaction had with Bedford, nor has it owned any at any time since or now that I know of.

D. A. PIERCE.

Subscribed and sworn to before me this seventeenth day of February, 1896.

[SEAL.] ALBERT P. FOWLER,
Notary Public.

55 "EXHIBIT A. A. P. Fowler, Notary Public."

Whereas, articles of incorporation of the Eastern Building and Loan Association of Syracuse, N. Y., were heretofore filed with the clerk of the county of Onondaga, in the State of New York, under and in pursuance of an act of the legislature of the State of New York entitled: "An act for the incorporation of building, mutual loan and accumulating fund associations," and known as chapter 122 of the Laws of 1851, and the acts amendatory thereof, and, whereas, certain informalities and omissions exist in the original certificates of incorporation, now, therefore, we the directors of said corporation, under and in pursuance of an act of the legislature of the State of New York, passed April 5th, 1870, entitled "An act for the relief of corporations organized under general laws," do hereby make and file the following amended certificate of incorporation, viz:

Articles of Incorporation.

We, the undersigned, hereby associate ourselves together and agree to become incorporated under the provisions of the act entitled "An act for the incorporation of building, mutual loan and accumulating fund associations," and known as chapter 122 of the Laws of 1851 and the acts amendatory thereof and supplementary thereto, under the name of the Eastern Building and Loan Association of Syracuse, N. Y., for the purpose of engaging in and carrying on business as hereinafter mentioned.

I. The name of the corporation shall be the Eastern Building and Loan Association of Syracuse, N. Y.

II. This association is formed for the purpose of purchasing real estate; for the erection of buildings or other improvements, and the improvement of lands; for aiding members in acquiring or improving real estate, or of removing encumbrances thereon by means of advances; for accumulating a fund for the benefit of members who do not obtain advances; and for the purpose of conducting the general business of a building and loan association, and providing the advantages usually expected from savings banks and other institutions of like character.

III. The principal place of business of this association shall be located at Syracuse, N. Y., but branches or agencies may be established and business done in any part of the State of New York or in any State or Territory of the United States as the board of directors may direct.

56 IV. The time of the regular meeting of this corporation shall be the second Monday in May of each and every year, and special meetings may be called at any time upon the written call of a majority of the directors of this association, or of ten or more shareholders therein. A quorum shall consist of not less than a representation of at least five hundred (500) shares of stock of said association; and not less than one-half of said directors, in cases where a directors' meeting shall be found necessary.

V. The qualification of members shall be as follows: Any person upwards of twenty-one years of age, or parents or guardians of children, may become members of this association, and shall become such upon subscribing for two or more shares of stock in this association as prescribed by the by-laws thereof.

VI. The management of all the business of the association shall be vested in a board of nine directors, who shall be chosen at each regular meeting. Said board shall have full power and authority to fill all vacancies and make such by-laws, rules and regulations for the general management and conduct of the business of this association as they may deem necessary. The officers of this association shall consist of a president, vice-president, secretary and general manager (combined), and treasurer, who shall be chosen by and from the board of directors at their first regular meeting after the annual meeting of the association; an attorney, who shall at the same time, be chosen by the board of directors from their number, or from one of the stockholders. Said officers to receive the vote of a majority of said board present at any meeting. And said board of directors shall in the same manner also designate a trustee who shall be chosen at its first regular meeting. Any of the officers, the trustee and attorney of this association may be removed or suspended from office by a majority of the board of directors and a majority of the number of shares of stock of said association.

VII. The duties of the several officers shall be as follows: The directors shall — upon the sufficiency of all property offered as security for loans and attend generally to the financial affairs of the association as provided by the by-laws to be hereafter adopted. It

shall be the duty of the president to preside at all meetings of the shareholders and of the board of directors; to sign certificates of stock and sign all releases of mortgages, and he shall perform all other duties pertaining to said office as provided by the by-laws to be hereafter adopted. The vice-president shall perform all the
57 duties of the president in his absence. It shall be the duty of the secretary and general manager to attend all meetings of the shareholders and board of directors; to receive all moneys paid into the association and to pay the same over to the treasurer and take his receipt therefor; he shall keep all accounts of the association; conduct all correspondence, sign all orders on the treasurer, and sign all certificates of stock under the direction of the board of directors; whenever required by the board he shall submit a statement of the financial affairs of the association. The books of the association shall be kept by him and shall at all times be subject to the inspection of the board. He shall receive from the attorney, after being recorded, all deeds or other documents pertaining to the business of the association and make proper entry of the same in books kept for that purpose. He shall attend to all printing and publication and have general supervision over all agents and agencies of this association, and any further duties as may be prescribed by the by-laws, to be adopted. It shall be the duty of the treasurer to receive all moneys from the secretary and deposit the same in the name of the association in such bank as shall be designated by the board of directors. He shall keep correct accounts of all moneys received and paid out by him. He shall make to the board of directors, when required, a statement, in writing, of the full business of his office. It shall be the duty of the attorney to examine all abstracts and records relating to the title of real estate offered as security for loans, and certify, in writing, to the board of directors all facts that might affect the interests of the association in case such security may be accepted. He shall prepare all papers incident to making loans and secure loans by the association and cause them to be properly executed and such other duties as may be required by the by-laws of this association.

VIII. All officers holding responsible positions shall execute to the association such bonds for the faithful performance of their duties as the board may require.

IX. The entrance fee of new members and new shares shall be one dollar ($1.00) per share of stock in said association. The monthly dues per share shall be seventy-five cents ($0.75). There shall be a transfer fee of two dollars ($2.00) on each and every certificate of shares transferred. The fines for non-payment of dues shall be ten cents ($0.10) on each and every share of stock unpledged and twenty cents ($0.20) on all stock pledged for each and
58 every month the payment may be in arrears. In case a monthly payment on any share shall become past due and payable for a period of six months or more such share shall be sold for the purpose of paying the arrearages. The proceeds of the sale shall first be used to pay all back monthly payments and fines and the balance remaining after paying all accrued fines and monthly

payments shall be paid to the member in whose name the stock stands at the time of sale. If the stock brings no more than enough to pay the accrued fines and monthly payments, it shall be bid in by the association and canceled, and the amounts standing to the credit thereof in the loan fund shall be divided among the other shares as profits.

X. The advances or loans made to any member of this association shall not exceed the face value of the stock owned by him, and except as hereinafter stated shall be upon satisfactory first mortgages, real-estate security, and be under such rules and regulations as the by-laws and the board of directors may require. Loans may be made upon shares in good standing and in force one year to an amount not exceeding 90 per cent. of the monthly dues paid to the association upon such shares as collateral security, and upon such notes, bond or other obligation or instrument as the board of directors and by-laws may require. A uniform premium of 10 per cent. shall be paid and allowed by the borrower upon each loan; and upon all loans the borrower shall pay interest at the rate of 5 per cent. per annum and a premium of 5 per cent. per annum as a redemption fee and the same shall be paid on the last Saturday of each month during the continuance of said loan at the principal office of the association. In case the monthly installments or loans are not paid as aforesaid, then interest at the rate of 6 per cent. per annum payable semi-annually shall be collected thereon; and in case of default, shall be made in the payments of the regular monthly installments, fees or dues, the association may compel payment of principal, interest and premiums, assessments, fees or dues by proceeding upon the note, or other obligation and mortgage, which shall at once become fully due and payable, and the association may cancel and treat as forfeited the shareholder's shares of stock, whether deposited as collateral security or not, and all payments previously made thereon, shall be forfeited to the association. Pledged shares may be transferred upon consent of the association by transferring the mortgage security upon payment of the fee therefor, provided all assessments, installments, dues and
59 charges thereon are paid to date, and subject to such other regulations, if any, as the by-laws may provide. Any shareholder may have his mortgage transferred or changed from one piece of property to another by giving thirty days' notice in writing, the shareholder to pay all expenses incurred by the transfer of the same. Loans may be prepaid and the mortgaged property released upon application to the association, and giving thirty days' notice in writing of the intention. An equitable discount shall be allowed therefor to be determined by the board of directors.

XI. Unpledged shares may be transferred upon consent of the association upon payment of the fee therefor, provided that all dues and claims thereon have been paid to date.

XII. Shares which are not pledged may be withdrawn before maturity, provided the same are in good standing and all dues and fines have been paid to date. The association shall have the right to require at least thirty days' prior notice of intention to withdraw.

Upon such withdrawal the holder will be entitled to receive thereon the amount of the monthly installments that have been paid with such additional interest, if any, as the by-laws may provide, except that the same shall not exceed the net earnings of said stock. But in no event shall the association be required to pay to withdrawing members more than one-half of the net receipts of the monthly installments paid in during the month in which the withdrawal occur-. In no case shall a withdrawal from the loan fund exceed the amount of the installments paid thereto, together with the estimated amount of the earnings upon the same.

XIII. The association shall have the right to mature any shares of one year's standing and to issue in the place thereof, paid-up certificates of shares payable at maturity, with interest at the rate of 6 per cent. per annum or at maturity of stock in pledge payable at maturity of loan. It shall also have the right to cancel any unpledged certificate of shares after it has been in force three years upon the payment to the holder of the total amount of installments paid thereon, together with interest thereon at the rate of 8 per cent. per annum to date of cancellation.

XIV. The qualification of voters at a meeting shall be that they are members in good standing as provided by the by-laws and be entitled to one vote for each share of stock held. Voting shall be by ballot, and the highest number of votes shall elect. Any member may authorize another member by written proxy to vote
60 his stock at any meeting, provided such proxy shall specify the particular meeting at which the same is to be used, and the same shall be filed with the secretary at the home office at least twenty days before the opening of such meeting. In all other cases the proxy given with the application for stock shall be operative.

XV. The amount to be paid to the owners of shares at maturity shall be one hundred dollars ($100) per share.

XVI. The by-laws of this association shall not be amended except — an annual meeting of said association and by a majority vote of the stock outstanding.

XVII. The amount of capital stock of this association shall be fifty million dollars ($50,000,000), divided into shares of one hundred dollars ($100) each, as provided by the by-laws. The funds of this association shall be divided into two classes, which shall be called, respectively, the loan fund and the expense fund. The expense fund shall consist of all admission, transfer, insurance, abstract, and attorneys' fees, amounts paid for insurance or taxes on property on which loans have been made, fees, costs, and disbursements of foreclosure, together with ten cents per share per month from the monthly payments on stock, and these funds so constituted, shall be devoted to the payment of operating expenses and said insurance and taxes. The loan fund shall consist of all receipts which do not go into the expense fund as hereinbefore provided, together with all interests and accumulations from whatever source. No money can be drawn from the loan fund for any other purpose than the making of loans on security as provided by the by-laws and to pay amounts due withdrawing shareholders. The funds of

the association not required for advances on shares may be invested by the board of directors in such securities as the savings banks of the State of New York are permitted to take or deposited at interest in the savings banks, trust companies or duly incorporated banks of said State, and which are in good standing.

XVIII. The stock of this association may be issued in series if the board of directors may so decide. The directors of the association may enter into such contracts and agreements and appoint such agents for its business management as they may deem for the best interest of its affairs.

XIX. These articles of incorporations may be amended at any annual or special meeting of the association, provided the same is previously endorsed by resolution of the board of directors
61 and adopted by a majority vote of stock of the association.

Dated Syracuse, February 22d, 1890.

HENRY H. LOOMIS.
DWIGHT H. MURRAY.
JNO. J. W. REYNOLDS.
LUCIUS M. KINNIE.
WILLIAM H. EMERY.
CHARLES A. POOLER.
ALEX. H. HUBBS.
ARTHUR B. KINNIE.
ROBERT W. ANDREWS.

STATE OF NEW YORK, }
Onondaga County, } *ss:*

On this February 22d, 1890, before me, the subscriber, personally appeared Henry H. Loomis, Dwight H. Murray, Jno. J. W. Reynolds, Lucius M. Kinne, William H. Emery, Charles A. Pooler, Alexander H. Hubbs and Robert W. Andrews, to me known to be the persons named in and who executed the foregoing certificate and duly and severally acknowledged that they executed the same.

E. A. CHRISTY,
Com'r of Deeds, Syracuse, N. Y.

The foregoing articles duplicated in the original, signed and dated as follows:

Dated Syracuse, February 22d, 1890.

HENRY H. LOOMIS, *President.*
DWIGHT H. MURRAY,
Vice-President.
JNO. J. W. REYNOLDS,
Secretary and General Manager.
LUCIUS M. KINNIE, *Treasurer.*
SAMUEL R. STERN, *Attorney.*
WILLIAM H. EMERY,
CHARLES A. POOLER,
ALEXANDER H. HUBBS,
ARTHUR B. KINNE,
ROBERT W. ANDREWS, *Directors.*

SYRACUSE, *February* 22, 1890.

At a meeting of the undersigned incorporation of the Eastern Building and Loan Association, held at the rooms of the
62 State Bank of Syracuse, in the Syracuse Savings Bank building, Syracuse, N. Y., the following proceedings were had:

Said Eastern Building and Loan Association effected a temporary organization by calling a meeting to order at 4 p. m., by electing as temporary president Henry H. Loomis, and Jno. J. W. Reynolds, secretary. The articles of incorporation, a copy of which is hereto annexed, were duly signed and executed by all present. By-laws were adopted after a full discussion of the same. The following officers were then elected, as provided by said articles of incorporation and said by-laws:

Henry H. Loomis, president.
Dwight H. Murray, vice-president.
Jno. J. W. Reynolds, secretary and general manager.
Lucius M. Kinnie, treasurer.
Samuel R. Stern, attorney.

Directors: Henry H. Loomis, Dwight H. Murray, Jno. J. W. Reynolds, Lucius M. Kinnie, Alex. H. Hubbs, Charles A. Pooler, William H. Emery, Robert W. Andrews, Arthur B. Kinnie.

The place of business designated as Syracuse, N. Y., and the location at present 83, 84 and 85 Writing block. The articles herein annexed are a true copy of the certificate of incorporation signed by the foregoing members and incorporators.

JNO. J. W. REYNOLDS,
Secretary and General Manager.

COUNTY OF ONONDAGA, *ss:*

John J. W. Reynolds, being duly sworn, says that he is one of the officers, to wit, the secretary and general manager of the Eastern Building and Loan Association of Syracuse, N. Y.; that he has read the foregoing certificate and minutes and knows the contents thereof, and that the same is a true copy and record of the certificate
63 of incorporation and of the minutes of the first meeting and the transactions had thereat with reference to the business of said association. JOHN J. W. REYNOLDS.

Sworn to before me this 25th day of February, 1890.

L. A. CHRISTY,
Com'r of Deeds, Syracuse, N. Y.

In witness whereof, we, the directors of said association have hereunto subscribed our names at the city of Syracuse, N. Y., this 16th day of December, 1890.

HENRY H. LOOMIS.
DWIGHT H. MURRAY.
JNO. J. W. REYNOLDS.
LUCIUS M. KINNIE.
WILLIAM H. EMERY.
CHARLES A. POOLER.
ALEX. H. HUBBS,
ARTHUR B. KINNIE.
ROBERT W. ANDREWS.

STATE OF NEW YORK, } ss:
County of Onondaga, City of Syracuse, }

On this 16th day of December, A. D. 1890, before me, the subscriber, personally came Henry H. Loomis, Dwight H. Murray, John J. W. Reynolds, Lucius M. Krine, William H. Emery, Charles A. Porter, Alexander H. Hubbs, Arthur B. Krine and Robert W. Andrews, to me personally known and known to be the same persons described in and who executed the foregoing instrument and severally acknowledged that they executed the same.

[L. S.]

J. B. VISSCHER,
Notary Public, Onondaga Co., N. Y.

(Endorsed:) Filed Dec. 17, 1890. Recorded Dec. 17, 1890, at 4.45 p. m. Geo. G. Catton, clerk. (Book N of Mis. Records, page 480, etc.)

STATE OF NEW YORK, } ss:
Onondaga County, }

CLERK'S OFFICE.

I, De Forest Suttle, clerk of said county and of the supreme and county courts therein, which are courts of record, do hereby certify that I have compared the foregoing copy of the amended articles of incorporation of the Eastern Building & Loan Association of Syracuse, N. Y., with the original record thereof now remaining
64 in this office, and that the same is a correct transcript of said original, and of the whole thereof, and of the endorsements thereon. In witness whereof, I have hereunto set my hand and affixed the seal of said county and courts, at the city of Syracuse, this 21 day of December, 1894.

[SEAL.]

DE FOREST SETTLE, *Clerk.*

"EXHIBIT B." A. P. Fowler, Notary Public.

O. K. Sup't.	Cashier.	Stock.	A. F., 1, 26, '91. Recorded.	Indexed.	Filed.	Mailed.

46 shares. Number 4773.

Application for Shares in the Eastern Building and Loan Association of Syracuse, N. Y.

Agent, J. H. T. Martin.

I, H. L. Bedford, of Bailey, county of Shelby, State of Tennessee, No. of street or P. O. box, —; occupation, farmer; hereby apply for membership in the Eastern Building and Loan Association of Syracuse, Onondaga county, New York, and subscribe for 46 shares of installment stock.

I hereby agree to abide by all the terms, conditions and by-laws contained or referred to in the certificate of shares, and will also comply with all the rules and regulations of said association, and

do also hereby, in order to facilitate the transaction of business of the Eastern Building and Loan Association of Syracuse, N. Y., make, constitute and appoint the secretary of said association for me, in my name, place and stead, to appear and vote as my proxy upon any and all shares of stock at any time held by me, or standing in my name in said association during my absence, at any and all meetings of stockholders or directors and upon any and all matters which may properly come before any such meetings and attorneys, one or more under him, from time to time in writing to appoint, hereby authorizing, ratifying and confirming all that *any* said
65 attorney, or his substitute, may do, or cause to be done as such proxy by virtue hereof. This proxy is not in any manner to affect my right to vote on all such stock whenever I am personally present at any stockholders' meeting.

In witness whereof I have hereunto set my hand and affixed my seal this 2d day of Jan'y, A. D. 1891.

Signature of applicant, H. L. BEDFORD. [SEAL.]

H. B. MARTIN, *Witness.*

The price of stock must accompany this application.

Endorsed.

Instructions to Agents.

This application should always be written in ink. All blank places should be filled correctly and plain to avoid any chance of error in the home office. Be particularly careful to have the name of applicant written plain and spelled correctly, and where there appears any possible chance for misreading any word. Agents should use the space at the bottom of application for explanation. The admission fee must accompany the application before the stock can be written at the home office.

Send certificate of shares to :

Name —— ——.

P. O. ——.

County ——, State ——.

Report of Loan Committee.

Application No. 165 of H. L. Bedford, Bailey, Tenn., $4,600, certificate No. 4776, 46 shares.

8. The title is in the name of H. L. Bedford.
9. The description is 400 acres of land, 260 cult.
16. The buildings on the property are 1½ house, 7 rooms, cistern, well, city water, bath-rooms, 40 x 60 hard or soft wood finish.
23. Has 40 x 60 barn, value $200.
25. Has owned the property 5 years.
26. Paid $6,000.
32. It is unencumbered $—.
34. The kind of building to be built is —.

35. Cash value $—.
37. Will carry insurance to the amount of $—.
66 44. — he — wants the money *to* for investment to release other property.
47. The applicant owns property valued at $40,000.
49. The property would bring in cash $6,000.
50. Would bring at forced sale $6,000.

The committee—approve the loan and recommend that it be—granted subject to usual conditions & L. B. R.

A. H. HUBBS,
— —,
— —,
Loan Committee.

"EXHIBIT C." A. P. Fowler, Notary Public.

Series No. B 2. Maturing August 1st, 1897. Eastern Building and Loan Association of Syracuse, N. Y.

Certificate number 4773; number of shares, 46; amount, $4,600.

This certifies that H. L. Bedford, of Bailey, county of Shelby and State of Tennessee, is hereby constituted a shareholder of the Eastern Building and Loan Association of Syracuse, New York, incorporated under the laws of the State of New York and holds forty-six shares therein of one hundred dollars each, and in consideration of the membership fee, together with agreement and statements contained in the application for membership in the association, and full compliance with the terms, conditions and by-laws printed on the front and back of this certificate, which are hereby referred to and made a part of this contract, and the said Eastern Building and Loan Association of Syracuse, New York, agree to pay said shareholder or his heirs, executors, administrators or assigns the sum of one hundred dollars for each of said shares at the end of seventy-eight months from the date hereof *on* in case of his death prior to the expiration of seventy-eight months, the association will pay the sum of all monthly installments paid on this certificate with interest at 6 per cent. per annum, payable in the manner and upon the conditions set forth in said terms, conditions and by-laws hereto attached. All payments under this certificate are payable at home office of the association at Syracuse, New York, within sixty
67 days after the acceptance and approval of satisfactory proofs.

This certificate of shares is issued to and accepted by the holder thereof upon the following express terms and conditions:

First. The shareholder agrees to pay or cause to be paid, a monthly installment of seventy-five cents on each share named in this contract, the same to be paid on or before the last Saturday of each month until such share matures or is withdrawn.

Second. If the shareholder shall fail to pay or cause to be paid any monthly installment on or before the last Saturday of each month, he shall pay a fine of ten cents per share for each and every month the payment may be in arrears.

Third. Stock in this association is non-forfeitable; but if a monthly payment on any share becomes past due and payable for a period of six months or more, such share shall be sold at auction for the purpose of paying the arrearages. The proceeds of the sale shall first be used to pay all back monthly payments and fines; the balance remaining after paying all accrued fines and monthly payments shall be paid to the member in whose name the stock stands at the time of sale. If the stock brings no more than enough to pay the accrued fines and monthly payments it shall be bid in by the association and canceled, and the amount standing to the credit thereof in the loan fund shall be divided among the other shares as profits.

Fourth. Any member may withdraw their monthly installments at any time by first giving thirty days' notice, and will receive 6 per cent. annual interest on all shares of six months' standing and up to two years; the third year's 7 per cent.; any time after the third year and before maturity 8 per cent.

Fifth. If a shareholder dies his personal representative may withdraw his shares at any time or continue on to maturity.

Sixth. At stated periods the profits arising from interest, premiums, fines and other sources, shall be apportioned among the shares in good standing.

Seventh. All payments must be paid to an authorized agent, or sent to the secretary at the home office by draft, express or money order, or registered letter. Individual drafts or checks not receivable.

Eight. The association reserves the right at any time to make an investigation in all cases prior to the approval of claims.

68 Ninth. The by-laws of this association, which are attached to and indorsed hereon, are a part of this contract, and such by-laws and this certificate are to be construed together as part of the contract between the association and the shareholder.

Tenth. No shares shall be assignable or transferable on the books of the association, except by the shareholder paying a transfer fee of two dollars for entering the same, and upon consent of the association, indorsed thereon by the secretary after all dues and claims on the same have been paid.

Eleventh. It is agreed by all shareholders of this association that desire loans, that all money in the loan fund shall be sold at a uniform rate of ten per cent., bid as premiums on all loans.

Twelfth. No shareholder shall have any claim to any interest in the affairs, assets or funds of this association, nor the control of them, except as above specifically set forth, and assumes no further liability of any kind whatsoever except as hereafter described.

Thirteenth. In every case where this contract shall cease and determine, or become null and void, then all payments made thereon shall become forfeited to the association.

Fourteenth. Any action brought against this association shall be commenced within six months after filing proofs, and in the county of Onondaga and State of New York.

Fifteenth. No agent has authority to change this contract in any

way, and the association assumes no obligation for any statements not contained in its printed literature.

Given under the seal of said association at Syracuse, New York, the second day of Feb'y, A. D. 1891.

H. H. LOOMIS, *President.*

[L. S.] JNO. J. W. REYNOLDS,
Secretary and Gen'l Manager.

Eastern Building and Loan Association.

By-laws.

Article I.

Name, object, location, and duration.

SECTION 1. The association shall be known as the Eastern Building and Loan Association of Syracuse, N. Y.

SEC. 2. Its object is to afford its members a safe and profit-
69 able investment of their savings, to facilitate the purchase and improvement of real estate and provide the advantages usually expected from savings banks and other institutions of like character.

SEC. 3. The principal place of business of this association shall be located at Syracuse, N. Y., but the branches or agencies may be located and business done in any part of the State of New York, or in any other State or Territory of the United States where no legal prohibition exists, by authority of the board of directors, to be evidenced by a vote of a majority of the board, and spread upon its records.

SEC. 4. This association shall continue for forty years.

Article II.

Capital stock.

SECTION 1. The capital stock of this association shall be fifty million dollars divided into shares of one hundred dollars each.

SEC. 2. All stock shall be issued on monthly series, dated on the first day of the month of its issue. Each shareholder in good standing shall be entitled to one vote for each share of stock held by him, and on which all dues have been paid, at all meetings of the shareholders.

Article III.

Directors and officers.

There shall be elected by ballot nine directors of this association at the annual meeting thereof by a majority of the stock represented and voting.

SEC. 2. The officers of this association shall consist of president, vice-president, secretary and general manager (combined) and treasurer, to be elected by and from the board of directors. All vacancies in the board of directors caused by death, resignation or

otherwise, and all vacancies from any cause, shall be filled by the board of directors until the next annual meeting of the association.

SEC. 3. The officers and directors of the association shall receive such salaries as the board of directors may deem advisable, provided the same must always be paid from the expense fund.

SEC. 4. All bonds to this association from any officer shall first be approved by the board of directors.

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Article IV.

SECTION 1. The annual meeting of the stockholders shall be held at the home office of the association on the second Monday of May of each year commencing with the year 1891, between 2 and 4 o'clock p. m., of which due notice shall be given according to law.

Article V.

Board of directors—meeting and duties.

SECTION 1. Stated meetings of the board shall be held monthly on the first Tuesday of each month. Special meetings may be called by the secretary, or by request of two or more members of the board.

SEC. 2. It shall be the duty of the board of directors to pass upon the sufficiency of all property offered as mortgage security for loans, and attend generally to the financial affairs of the association. They shall have the management of the association not otherwise provided for in the by-laws and the right to disburse such amounts as may be necessary to properly conduct the business of the association. They shall cause the secretary to mail to each shareholder, after each annual meeting, a general statement of the business of the preceding year and a report of the financial condition of the association as found by them after a thorough examination. A majority of the board shall constitute a quorum for the transaction of any business.

Article VI.

President and vice-president.

SECTION 1. It shall be the duty of the president to preside at all the meetings of the shareholders and of the board of directors, to sign all certificates of stock and sign all releases of mortgages, and to perform all other duties usually appertaining to this office.

SEC. 2. The vice-president shall perform all the duties of the president in his absence. In case of any vacancy in that office he shall be *ex officio* president until the vacancy is filled.

Article VII.

Secretary and general manager.

SECTION 1. It shall be the duty of the secretary and general manager to attend all meetings of the shareholders and board of

directors; to receive all money paid into the association, and
71 to pay the same over from time to time, to the treasurer and take his receipt therefor, and keep all amounts of the association between the association and the shareholders; issue all notices; conduct all correspondence; draw and sign all orders on the treasurer; and sign all certificates of stock under the direction of the board.

SEC. 2. Whenever required by the board, he shall submit a statement in writing of the financial affairs of the association. The books of the association shall be kept by him, and at all times be subject to the inspection of the board. He shall under the direction of the board of directors, see to the settlement of all claims and bills, and shall keep insured all interest the association may have in any building or property liable to loss by fire; with the assistance of the attorney of the association, he shall protect its interests in all tax sales or forfeitures or foreclosures of property in which it may hold any interest, and for these purposes is authorized to draw on the treasurer without further action of the board of directors, such payments to be reported at the next meeting of the board of directors. He shall receive from the attorney, after being recorded all deeds or other documents pertaining to the business of the association, and shall make proper entry of the same in books kept for that purpose. He shall give bond, to be approved by the board of directors, for the benefit of the association, conditioned for the faithful performance of the duties of his office and the direction of the board of directors.

SEC. 3. It shall be his duty, as general manager, to attend to all advertising, printing and publications; look after all bonds of agents, local and special; look after all property that is offered for security, and report the same to the board, and to have the general supervision over all agencies, to appoint agents, assistants and other necessary help.

Article VIII.

Treasurer.

SECTION 1. It shall be the duty of the treasurer to receive all moneys from the secretary and deposit the same in the name of the association in such bank as shall be designated by the board of directors, signed by the secretary. He shall keep correct account of all moneys received and paid out by him. He shall deposit with the trustee all abstracts of title, deeds, bonds, mortgages, contracts and other securities belonging to the association. He shall make
72 to the board of directors, when required, a statement in writing or otherwise of the full business of his office. He shall furnish a satisfactory bond, to be approved by the board of directors, for the benefit of the association, conditioned for the faithful performance of the duties of his office, in conformity with the by-laws and the order of the board of directors.

Article IX.

Attorney.

SECTION 1. It shall be the duty of the attorney to examine all abstracts and records relating to the title of real estate offered as security for loans and certify in writing to the board of directors all facts that might affect the interests of the association, in case such security may be accepted.

SEC. 2. He shall prepare all papers incident to making sales and securing loans by the association, cause them to be properly executed, file the same for record in the proper office of the county, and when so recorded deliver the same to the secretary, and in general do and perform all things incident to his office.

Article X.

Official bonds.

SECTION 1. All officers holding responsible positions shall execute to the association such bonds for the faithful performance of their duties as the board of directors may require.

Article XI.

Funds.

SECTION 1. The receipts of said association shall be divided into two classes, which shall be called respectively the loan fund and expense fund. The expense fund shall consist of all admission, transfer, insurance, abstract and attorneys' fees, amounts paid for insurance or taxes on property on which loans have been made, fees, costs and disbursements of foreclosure, together with ten cents per share per month from the monthly payments on stock, and this fund so constituted shall be devoted to the payment of operating expenses and said insurance and taxes.

SEC. 2. The loan fund shall consist of all receipts which do not go to the expense fund, as hereinbefore provided, together with all interest, fines, earnings and accumulations from whatever source. No money can be drawn from the loan fund for any other purpose than the making of loans on security, as provided by the by-laws, and to pay amounts to withdrawing shareholders.

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Article XII.

Eligibility.

SECTION 1. All new shareholders elected or appointed as directors or officers of this association shall concur in and accept the previous resolutions, agreements and obligations of said association, and shall only become eligible to such position after having performed all personal obligations agreed upon prior to their election or appointment.

SEC. 2. Persons not of lawful age can only become shareholders through their lawfully appointed guardians, who shall sign the application as provided by law.

Article XIII.

Elections and inspectors.

SECTION 1. At the stated meeting of the board of directors next preceding the day appointed for the annual meeting, there shall be elected by the board of directors three shareholders, not candidates for election, to act as inspectors thereof who shall receive the votes, count the same, and report in writing the names of the persons having the greatest number of votes, who thereupon shall, by the president, be declared duly elected, whereupon the secretary shall give notice to such directors. Any member may authorize another member by written proxy to vote his stock, provided that all proxies shall be filed with the secretary at the home office at least twenty days before the opening of the meeting at which they are to be used.

Article XIX.

Contract of members.

SECTION 1. The terms and conditions expressed in the certificate of stock, in connection with the application for membership and the by-laws of the association, *from* the contract between the association and each shareholder therein.

SEC. 2. All persons desiring to become shareholders of this association must fill out, sign and deliver to the secretary an application according to the form adopted by the association, which said application shall be a part of said application with this association. Such applicant shall also pay a membership fee of one dollar per share for each and every share held by him.

SEC. 3. All loans made by this association shall be upon satisfactory note and first mortgage secured on real estate, together
74 with fire-insurance policy in some approved company, if upon improved property, and for every one hundred dollars of loan made to a shareholder, who shall in addition thereto transfer in pledge to the association one share of the stock held by said shareholder as collateral security on all loans made by the association to a shareholder. Said shareholder shall pay an interest of five per cent. per annum and a premium of five per cent. per annum *and a premium of five per cent. per annum* on all said loans. All interest and stock payments shall be paid on the last Saturday of each month during the continuance of said loan, and at the same time the shareholders not borrowing shall pay their monthly payments as the principal office of the association.

SEC. 4. Abstracts of title must be furnished by the borrower, also the legal examination and opinion of the attorney of this association that the title to the property offered as security is clear and owned in fee-simple, and he must so report. All such abstracts, searches and attorneys' fees, and all fees for recording, drawing and canceling mortgage are to be paid by the borrower.

SEC. 5. Borrowing members who shall neglect to pay any installments on stock and interest on their loans, as the same become due,

shall pay to the association a fine of twenty cents per month on each one hundred dollars that they may have borrowed from the association. Non-borrowing members who shall neglect to pay their monthly installments promptly shall pay to the association a fine of ten cents per month on each share of stock owned by them.

SEC. 6. Should a shareholder whose property is mortgaged to the association desire to release the same by prepayment of his indebtedness, he may, on application to the association, be allowed to do so by giving thirty days' notice in writing of such intention, and be allowed an equitable discount therefor, to be fixed by the board of directors.

SEC. 7. Any shareholder may have his mortgage transferred from one piece of property to another, by giving thirty days' notice in writing, the shareholder to pay all expenses incurred by the transfer of the same.

SEC. 8. Any shareholder may sell or transfer property mortgaged to the association, and the purchasers must assume all stipulations, agreements and conditions of the original mortgagor by a proper instrument in writing, to be paid for at his own expense. Said person purchasing must also purchase the shares held by said shareholder, which will be transferred on the books of the association to said purchaser; all assessments or installments thereon being paid up to time of transfer upon payment of fees therefor; or the association may accept a new mortgage from said purchaser to secure the former loan until the expiration of said loan, upon the same or other sufficient property, upon payment of all fees and expenses thereof.

SEC. 9. All deeds, notes, leases or other written instruments requiring to be executed, and all satisfactions and releases of mortgages and other indebtedness ordered by the board of directors, shall be signed in the name of the association by the president, or in his absence by the vice-president, and countersigned by the secretary, and when necessary acknowledged by the president and secretary of the association in their official capacity, and have the corporate seal attached.

SEC. 10. If any shareholder or any person shall neglect to pay the interest or installments on his loan, or the regular monthly installments, fees or dues for six (6) months, the secretary may compel payment of principal, interest and premiums, assessments, fees or dues, by proceeding on his note and mortgage, which shall at once become fully due and payable, and the association may cancel and treat as forfeited the said shareholder's shares of stock, whether deposited as collateral security or not, and all payments previously made thereon shall be forfeited to the association. Punctuality and strict performance on the part of all members, borrowers and shareholders, in payment of fines, dues, interest, loans and premiums, are made the essence of the contract.

SEC. 11. Any shareholder may pay his installments, interest and premium in advance, or deposit with the association a certain sum to be used for such payments as they may fall due, and the association will receipt for the same and notify when said deposit is ex-

hausted. If members make payments in advance for a period of six months and not over two years a discount may be allowed at the rate of seven per cent. per annum for the time each payment is actually advanced.

SEC. 12. Any shareholder who has made a loan by giving taxable property as a security shall be bound to pay all State or city or other taxes or assessments as they become due, in addition to all other payments, and his failure to do so, will make his loan, notes, mortgages, premiums and interest at once fully due and payable at the option of the board of directors.

SEC. 13. Each share of stock shall be charged with any and all amounts that may be owing from the shareholder or of his
76 assigns, to the association, whether in dues, loans, fines, interest or premiums, and all certificates of stock in said association shall, whether mentioned therein or not, be subject to a lien thereon, to secure any such indebtedness, and the right to deduct and withhold the amount of any such indebtedness is hereby expressly reserved to the association.

SEC. 14. All shareholders shall pay or cause to be paid a monthly installment of seventy-five cents on each share named in their certificate, until the same shall be fully paid; said installment to be paid to the association on or before the last Saturday of each month. Shareholders are required to pay monthly installments without notice.

SEC. 15. In case of change of residence or post-office address, name of the shareholder or his or her legal representative, notice thereof in writing shall be given at once to the secretary of the association.

SEC. 16. All remittances for advance, installments, premiums, monthly installments, fines and penalties, interest and premiums, and all other payments, shall be made to the secretary of the association at the home office, and in registered letter, express or money order or drafts. Individual checks shall not be received.

SEC. 17. Should the board of directors require further evidence of a claim than is given in the proof furnished on the same, it hereby reserves the right to extend the time of payment until such necessary proof is furnished and investigation is made. The association shall have sixty days after the filing of the proofs of a claim, and the approval thereof by the board of directors, in which to pay the same, and this applies to claims maturing by death as well as to maturity of stock.

SEC. 18. If shares are withdrawn at any time before maturity, the holders thereof will be entitled to receive the amount paid into the loan fund in monthly payments; after six payments have been made on stock the holder thereof can withdraw his monthly installments that have been paid to the local fund, with interest at the rate of six per cent. per annum, seven per cent. after two years and eight per cent. after three years.

SEC. 19. Any shareholder wishing to withdraw his stock may be allowed to do so at any time, but the association shall not be required

to pay out more than one-half of the net receipts of the monthly installments paid in that month, to withdrawing members.

SEC. 20. The association reserves the right to mature any certificate at any time after one year, and to issue a paid-up certifi-
77 cate of shares, payable at maturity of stock, with interest at the rate of six per cent. per annum, or at maturity of stock in pledge, payable at time of maturity of loan. The association reserves the right to cancel any unpledged certificate, after it has been in force three years, upon the payment to the owner of the total amount of installments paid thereon, together with eight per cent. per annum as added dividend.

SEC. 21. And it is hereby expressly agreed between all shareholders and this association, that a payment of one hundred dollars per share, named in their certificate, that has been in force till maturity, shall be accepted as full payment of all claims on their certificate or against this association.

SEC. 22. Paid-up and non-assessable stock may be issued and sold at the price of fifty dollars per share payable on date of issue. Any parties holding such paid-up stock, wanting to withdraw the same before maturity, may do so and receive six per cent. annual interest from the date of issue of said stock.

SEC. 23. Paid-up stock shall be indorsed by the trustee and cannot be withdrawn for one year from date of issue.

Article XV.

Loans.

SECTION 1. Each shareholder, for each share named in their certificate, shall be entitled to a loan of one hundred dollars from the association, provided they shall first make application for such a loan upon a blank furnished by the association for that purpose, if the condition of the loan fund in the treasury shall warrant it. All applications for loans shall be filed and numbered consecutively as received, and be examined and approved, or rejected, by the board in their regular order.

SEC. 2. All shares must be in force three months before said shareholder shall be entitled to a loan. All applications for loans are part of the contract of the shareholders with this association. Nothing herein contained shall prevent the board of directors from loaning funds of the association to any member in greater sums than the above provided upon approved securities.

Article XVI.

Local boards.

SECTION 1. Whenever sufficient stock has been sold in any town to make it advisable the members residing in each town may
78 organize a local board or branch of the association. The officers of the local organization shall consist of a board of from five to nine directors, from whose number shall be elected a president, secretary and treasurer (combined) and attorney; all of

whom must be shareholders in the association; these officers shall hold office one year and until their successors are elected.

SEC. 2. The traveling agents of the association are given authority to appoint the first officers of the local board. Provided, however, that officers so appointed shall only hold office until the members of the local board meet and elect their successors.

SEC. 3. It shall be the duty of the officers of the local board to pass on all applications for loans which are received by the association from members residing in the town where such local board is located, and to protect the interest of the association in all practicable ways.

SEC. 4. Members may, if they so desire, make monthly payments on stock to the local treasurer. But such local treasurer shall be deemed to be the agent of the members, and not of the association.

SEC. 5. As soon as the officers of the local board have been appointed or elected, and the names of such officers have been certified to the association by a traveling agent or by the local secretary, a local-board charter shall be issued to such board.

SEC. 6. The president of the local board shall call a meeting thereof whenever three members shall request him so to do.

Article XVII.

By-laws.—Amendment.

SECTION 1. No amendment shall be made to these by-laws unless previously indorsed by resolution of the board of directors and adopted by a majority vote of the stock of said corporation.

The within-mentioned shares of stock in the Eastern Building and Loan Association of Syracuse, N. Y., are hereby withdrawn, and I have this day received the sum of forty-six hundred dollars in full of the amount due me by reason of such withdrawal.

Dated at Memphis, 7/16, 1891.

H. L. BEDFORD. [SEAL.]

Witness:

J. H. T. MARTIN.

Endorsed: Read your certificate of shares. No. 4773. Shares, 46. $4,600.00. Eastern Building and Loan Association of Syracuse, N. Y. Shareholders, H. L. Bedford; city or town, Bailey; county, Shelby; State, Tennessee; monthly installment, $34.50; date of issue, Feb'y 2, 1891; maturity, August 1, 1897. Always mention the number of this certificate when writing to the home office.

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"EXHIBIT D." A. P. Fowler, Notary Public.

Each question must be answered in this application for loan.

From the Eastern Building and Loan Association of Syracuse, N. Y.

— —— —— do hereby make application for a loan of forty-six hundred ($4,600.00) dollars, for six and a half years, to bear interest

at the rate of five per cent. per annum, and a premium of five per cent. per annum, payable on or before the last Saturday of each month; all payments to be paid at such place as the lender may direct: and to secure the same — agree to give a mortgage on the real estate set forth in the following questions and answers:

1. Name of applicant: H. L. Bedford.
2. Name of wife, if married? Lou M. Bedford.
3. What is your post-office, street and number? Bailey, Shelby Co., Tenn.
4. What is the population of the town? Village.
5. What is the population of the county? 120,000, about.
6. What is your occupation? Farmer.
7. What has your occupation been? Farmer.
8. The title to the property is in the name of? H. L. Bedford.
9. What is the description of the property offered as security? 400 acres farming, 260 acres in cultivation, 7-room wood and frame dwelling, barn, tenant-house, at Bailey, Tenn.

(Give size, number of lot, block, addition, town, county; also show the location of the same on diagram on the other side.)

10. What is the size of the ground? 400 acres.

80 11. On what street or streets is it situated and number? Farm.

12. Is the ground above or below grade, and how much? Undulating.
13. What is the distance from the business center of town? About 100 yards from depot.
14. Is there a continuous sidewalk from the property to business? No.
15. What buildings are on the premises, and how occupied? Dwelling, barn, stables, tenant houses, etc.
16. Kind of buildings now on premises? Frame, 1½ stories high, 7 rooms. Cistern? Yes. Soft-wood finish. Soft mantels. Size on ground. Is it all finished? Give size and description of cellar. Is the house painted?
17. When built and in what repair? Do not know exactly, but some years since.
18. What kind of flues in your house? Chimneys.
19. What direction does your house front? North.
20. Give date of last improvements, and what were they? Built one house this winter and fencing.
21. Have all the bills been paid for such repairs and erections? Yes.
22. Of what kind and in what repair are the fences and sidewalks? Good.
23. Have you a barn? Yes. Size, 40 x 60; value in cash, $200.00.
24. What improvements are there aside from the buildings, fence and sidewalk? Orchards, wells, cisterns and forest shade trees.

(State particulars about fruit, shade and ornamental trees.)

25. How long have you owned the property? Five years.

26. How much did you pay for it, and did you pay in cash or other property? $6,000.00; part cash; $1,200 in other property.

27. What amount of fire insurance will you carry in an approved company for benefit of lender? Not insured.

28. If the property is rented, state to whom, for what period and rental. Only part for $180.00. 1 farm balance.

29. What is the property worth in cash, exclusive of the buildings? $6,000.

30. What are the buildings worth in cash? $2,000.00.

31. Is the title perfect in applicant? Yes.

32. Is the property incumbered in any way by mortgage or mechanics' liens, unpaid taxes, judgments, suits pending, or liens of any kind? If so, state the nature, date, maturity and amount of incumbrances, and by whom held. No.

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33. Can the liens on the premises, if any, be paid now? There are none.

34. Kind of buildings to be built? Frame, brick, stone, brick veneer, stories, rooms, furnace, cisterns, well, city water, sewer, bathrooms, hard-wood finish, soft-wood finish, mantels, size of ground.

35. Value in cash of buildings to be built? None.

36. Annual rent of buildings in cash to be built? None.

37. Amount of insurance payable to mortgage on building to be built? $—.

The money to be paid upon this loan as follows:

38. When foundation is completed? $—.

39. When roof is on? $—.

40. When plastering is finished? $—.

41. When inside finish is placed? $—.

42. When all is completed, the balance? $—.

43. Is there anything within your knowledge not embraced in the foregoing that would render this loan unsafe? No.

44. For what is the money borrowed? For investment to relieve adjoining property.

45. Does your wife consent to join in the note or mortgage? Yes.

46. Have all the holders of liens consented in writing to release upon payment of amounts due? There are none.

47. What is the cash value of the property owned by you? $40,000.00 easy.

48. What are your total liabilities at this time? $5,000.00.

49. What could the property be sold for now in cash. $6,000.00 easy.

50. What would it bring in cash at forced sale now? $6,000.00, or $15 per acre.

If this application is accepted, I will furnish at my own expense a complete abstract of title to the land proposed as security, and have the same certified to be correct by the proper county officers, which shall be brought down to date subsequent to the filing of the instrument securing my loan, and show a clear and perfect title in the mortgagors. Also attorney's search and pay expenses of exam-

82 ination and appraisement of the property, and pay for recording the mortgage or trust deed, and I further agree to forward with said paper ten dollars ($10) to pay the attorney of the association for making the examination of the same. I also agree to furnish the mortgagee each year during the continuance of said loan with evidence that all taxes and other assessments against said property have been paid. I also agree to keep the property insured for $— in favor of the mortgagee. Dated at Memphis, this 20th day of March, 1891.

(Signed) H. L. BEDFORD. [SEAL.]

H. B. MARTIN, *Witness.*

— solemnly swear that the foregoing statements are true. That the owner of the above-described premises is an actual and peaceable possessor of the same, and — title and possession have never been questioned, and that there are no judgments against — in any courts of record in said county, or in the United States courts; and that — do not owe any money to mechanics or builders or others for work done or material furnished for improvements made on the above-described premises; and that there are no encumbrances on said property, except as stated above.

H. L. BEDFORD. [SEAL.]

STATE OF TENNESSEE, *Shelby County,* } ss:

On this 20th day of March, A. D. 1891, personally appeared before me, the above-named H. L. Bedford and made oath that the answers by him made and subscribed are true and full.

[SEAL.] H. B. MARTIN,
Notary Public, Shelby County.

Appraisers' Report.

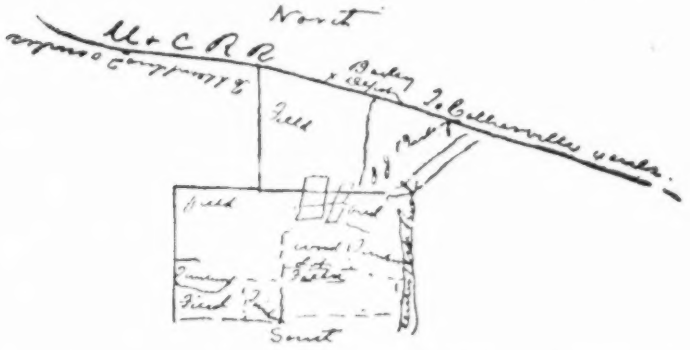
STATE OF TENNESSEE, *Shelby County,* } ss:

We, the undersigned, do solemnly swear that we are well acquainted with the value of town or city property in Shelby Co., and with the property described in above application, and that it is worth exclusive of the buildings, in cash $6,000, *dollars,* and the buildings are worth in cash $1,000, *dollars.* The property would bring at forced sale, in cash, at the present time, $6,000. We are personally acquainted with H. L. Bedford, mentioned in the within application, and believe him to have good standing
83 and credit. We regard him as a prompt, upright, reliable person, pecuniarily responsible for his contracts, and we believe that he will promptly meet all payments of principal and interest on the loan herein applied for. We are not interested in said premises, nor in the result of this application for a loan.

(Signed) GEO. E. RUDISELL. [SEAL.]
C. B. GALLOWAY. [SEAL.]
J. H. T. MARTIN.

Subscribed and sworn to before me, this 5 day of May, A. D. 1891.

[SEAL.] H. B. MARTIN,
Notary Public.



Endorsed: No. 165. Cert. No. 4773. $4,600. Application for a loan by H. L. Bedford. Town, Bailey. County, Shelby. State, Tennessee. Approved May 18, 1891.

EXHIBIT E. A. P. Fowler, Notary Public.

Application for an Advance.

To the board of directors of the Eastern Building and Loan Association of Syracuse, N. Y.

GENTLEMEN: At a regular meeting of your board, held May 18, 1891, having obtained the preference for an advance on forty-six shares of No. 4773 of your association, at a premium of ten per cent. I now respectfully request the advance be granted. I hereby
84 agree to comply with the charter and by-laws of your association and all requirements defined by your committee of the board of directors.

H. L. BEDFORD, *Applicant.*

Witness:
J. H. T. MARTIN.

STATE OF TENNESSEE, } ss:
Shelby County, }

H. L. Bedford, of Bailey, said Co., being duly sworn, doth depose and say that the lands and premises described in the mortgage executed by deponent and Lou M. Bedford, his wife to the Eastern Building and Loan Association of Syracuse, N. Y., under date of May 1st, 1891, and being on 400 acres conveyed to deponent by B. W. Lauderdale and wife, Feb'y 10, 1886, and situate in 10th civil district of said county, are owned by deponent in fee-simple and free and clear from all mortgages (except the mortgage aforesaid),

taxes, assessments, judgments, clouds, liens and encumbrances of every kind and description, whatever, including obligations for purchase-money of the same, and that the title of deponent to the same is perfect and indefeasible; that deponent is now and has been for five years last past in the quiet and undisputed possession of said premises, and that deponent and those under and through whom title is claimed, and has been derived, have actually and exclusively occupied the same under a claim of title for more than twenty years last past; that said mortgaged premises are the same premises referred to in the application for loan and appraised therefore by the appraising committee of said association at Memphis, Tenn., that no mortgage, lien or encumbrance of any kind has been executed, or suffered or permitted to be executed, by deponent upon said premises prior to the said aforesaid mortgage to said association within the last ninety days, and that said mortgage is the only encumbrance now in force and a lien upon said premises. And deponent further deposes and says that he is not on any person's bond as surety for the payment of any sum of money, or upon any official bond of any kind either as principal or surety, nor are there any judgments or decrees of any United States court outstanding against deponent or any former owner of said premises and a lien thereon; that deponent and Lou M. Bedford, his wife, are citizens of the United States and each of the age of twenty-one years and upwards; and that the statements and representations herein are made
85 for the purpose of procuring a loan from said association, for the security of which the aforesaid mortgage is given, and for no other purpose whatever.

H. L. BEDFORD.

Subscribed and sworn to before me this 20 day of June, 1891.
[SEAL.] J. H. T. MARTIN,
Notary Public.

"EXHIBIT F." A. P. Fowler, Notary Public.

Eastern Building and Loan Association of Syracuse, N. Y.

JULY 8, 1891.

Pay to H. L. Bedford, or order, forty-one hundred, forty $\frac{00}{100}$ dollars ($4,140.00) with exchange on New York.
[SEAL.] JNO. J. W. REYNOLDS, *Secretary.*

To Trust & Deposit Co. of Onondaga, Syracuse, N. Y.

No. 866.

Endorsed: H. L. Bedford.

Pay Mechanics' national bank, New York, N. Y., or order for account of Union & Planters' Bank of Memphis, Tenn.
No. 21075. S. P. READ, *Cashier.*

For collection, for acc't, of Mechanics' national bank, N. Y.
WM. SHARP, JR., *Cashier.*
(3d teller.)

Not valid unless countersigned by L. M. Kinne, treasurer.

86 "EXHIBIT G." A. P. Fowler, Notary Public.

MEMPHIS, TENN., *Aug.* 13, '90.

Minutes of a Meeting of the Stockholders, at Memphis, Aug. 13, '90, of the Eastern Building and Loan Association of Syracuse, N. Y.

Pursuant to a call of Mr. G. H. Hodge on Aug. 13, '90, there met at the office of Hodge & Palty, Memphis, Tennessee, the following stockholders of the Eastern Building & Loan Association:

J. W. Buchanan.
Thos. E. Edwards.
J. H. T. Martin.
G. F. Hulls.
G. H. Hodge.
T. J. Patty.
T. C. Lowrey.

Upon motion of Mr. Hodge, Judge Buchanan was elected to the chair and the meeting then called to order.

The first business before the meeting was the election of nine directors of this local board to serve for 12 months. The following names were declared elected: J. R. Pepper, Thos. Dean, J. W. Buchanan, Thos. E. Edwards, J. H. T. Martin, G. F. Hulls, G. H. Hodge, T. J. Patty, T. C. Lawry.

There being no further business before this meeting, Mr. Edwards motioned to adjourn which was carried. Minutes read and approved. J. H. Martin, acting secretary. Upon the adjournment of the meeting of the stockholders a meeting of the directors was immediately called. Upon motion Mr. Hodge was elected to the chair. Mr. Hulls nominated J. R. Pepper for president, which was promptly seconded, and Mr. Edwards was authorized to cast the vote for all present, for Mr. Pepper which he did. Mr. Dean was then nominated for vice-president, and Mr. Edwards authorized to cast all the votes for him, which he did and Mr. Pepper and Mr. Dean were declared elected.

The position of office of secretary and treasurer was then openly discussed and it was deemed best by the officers to combine the two officers in one. Mr. T. C. Lawry was nominated for the office, and Mr. Edwards authorized to cast the votes for seven directors present for Mr. Lawry which he did, and Mr. Lawry was declared
87 elected, his compensation to be fixed at a future meeting.

Judge Buchanan was then nominated for attorney for the company at Memphis, and Mr. Edwards likewise authorized to cast all seven votes which he did, and Judge Buchanan was declared the attorney for the company. There being no further business before the meeting Mr. Edwards moved to adjourn subject to call of the president which was carried.

Respectfully submitted.

J. H. MARTIN,
Acting Sec'y.

Application for Local Board Charter.

Eastern Building and Loan Association, home office, Syracuse, N. Y.:

We, the undersigned, hereby apply to the Eastern Building and Loan Association of Syracuse, N. Y., for a local board charter.

Is it the duty of local board to assist the association, in every way possible, in the transaction of its business. No loans will be made to members unless they are connected with and under the jurisdiction of a local board. Applications for loans will not be entertained at the home office unless first approved by the local board. The officers of a local board consist of a president (vice-president), secretary and treasurer (combined), and board of not less than five nor more than nine directors and an attorney, and each member to be a stockholder. Traveling agents may appoint the first officers of the board whose term shall immediately expire on the election of successors. The local board treasurer shall be deemed the agent of the local board members and not the agent of the association. Is it expected and desired that local boards send delegates from time to time to the home office.

Name.	P. O. address.	Occupation.
J. R. Pepper	Memphis	Merchant.
Wm. Dean	Memphis	Merchant.
Tom C. Lowrey	Memphis	Real-estate ag't.
G. H. Hulls	Memphis	U. S. St. boat insp't.
Thos. E. Edwards	Memphis	M. D.
J. H. Martin	Memphis	Real-estate dealer.
J. W. Buchanan	Memphis	Att'y-at-law.
G. H. Hodge	Memphis	Real-estate dealer.
F. J. Patty	Memphis	Real-estate dealer.

88 *Officers of Local Board.*

President, J. R. Pepper; secretary and treasurer, Tom C. Lowrey; vice-president, Wm. Dean; attorney, J. W. Buchanan.

I hereby certify that above is a correct list of officers elected by said board.

HODGE & PATTY, *Agents.*

"Exhibit H." A. P. Fowler, Notary Public.

Extract of the minutes of a regular adjourned meeting of the officers and directors of the Eastern Building & Loan Association, held at its offices in the Kirk block, Syracuse, N. Y., May 18th, 1891.

"The loan committee reported and recommended that loans be granted as follows: * * * App. No. 165, on certificate 4776, of H. L. Bedford, Bailey, Tennessee, for $4,600.00. On motion report of committee was adopted.

W. H. EMERY,
Ass't Sec'y."

Circuit Court of the United States, Western District of Tennessee.

EASTERN BUILDING & LOAN ASSOCIATION, ETC., vs. H. L. BEDFORD and WIFE. } No. 487.

STATE OF NEW YORK, *Northern District, County of Onondaga,* } ss:

I hereby certify that on the 17th day of February, 1896, before me, Albert P. Fowler, a notary public in and for the county of Onondaga and State of New York, at my office No. 626 Kirk block, in the city of Syracuse, county of Onondaga, and State of New York, personally appeared, pursuant to the annexed agreement, D. A. Pierce, Esq., the witness named in said agreement. No one appearing as counsel for either said plaintiff or said defendants, and the said D. A. Pierce being by me first duly cautioned
89 and sworn to testify the whole truth, and being carefully examined, deposed and said as appears by the deposition hereto annexed; and I further certify that said deposition was then and there reduced to writing by me, and was, after it had been reduced to writing, subscribed by the witness, and the same being retained by me for the purpose of sealing up and directing the same to the clerk of the court as required by law; and I further certify that the reason why said deposition was taken, was that the said witness resides at the city of Syracuse, N. Y., more than one hundred miles from Memphis, Tennessee, the place where the cause is to be tried; and I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the cause; and I further certify that the fee for taking said deposition, ten dollars ($10) has been paid to me by the plaintiff and the same is just and reasonable.

In testimony whereof, I have hereunto set my hand and official seal at the city of Syracuse, county of Onondaga and State of New York, this 17th day of February, A. D. 1896.

[SEAL.] ALBERT P. FOWLER,
Notary Public.

Circuit Court of the United States, Western District of Tennessee.

EASTERN BUILDING & LOAN ASSOC'N vs. H. L. BEDFORD and WIFE. } No. 487.

Notes. Filed April 8, 1896.

No. 9698.—On or before the last Saturday of June, 1893, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9699.—On or before the last Saturday of July, 1893, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the

order of the Eastern Building and Loan Association at its office in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

90 No. 9700.—On or before the last Saturday of August, 1893, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9701.—On or before the last Saturday of September, 1893, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9702.—On or before the last Saturday of October, 1893, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9703.—On or before the last Saturday of November, 1893, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y. Value received. Bailey, Tenn, May 1st, 1891. H. L. Bedford.

No. 9704.—On or before the last Saturday of December, 1893, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9705.—On or before the last Saturday of January, 1894, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9706.—On or before the last Saturday of February, 1894, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9707.—On or before the last Saturday of March, 1894, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn, May 1st, 1891. H. L. Bedford.

91 No. 9708.—On or before the last Saturday of April, 1894, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9709.—On or before the last Saturday of May, 1894, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse,

N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9710.—On or before the last Saturday of June, 1894, I promise to pay seventy-two & 86-100 dollars $72 86 100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9711.—On or before the last Saturday of July, 1894, I promise to pay seventy-two & 86-100 dollars $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9712.—On or before the last Saturday of August, 1894, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9713.—On or before the last Saturday of September, 1894, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9714.—On or before the last Saturday of October, 1894, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9715.—On or before the last Saturday of November, 1894, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

92 No. 9716.—On or before the last Saturday of December, 1894, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn. May 1st, 1891. H. L. Bedford.

No. 9717.—On or before the last Saturday of January, 1895, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9718.—On or before the last Saturday of February, 1895, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9719.—On or before the last Saturday of March, 1895, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse,

N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9720.—On or before the last Saturday of April, 1895, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9721.—On or before the last Saturday of May, 1895, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9722.—On or before the last Saturday of June, 1895, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9723.—On or before the last Saturday of July, 1895, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

93 No. 9724.—On or before the last Saturday of August, 1895, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9725.—On or before the last Saturday of September, 1895, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9726.—On or before the last Saturday of October, 1895, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9727.—On or before the last Saturday of November, 1895, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9728.—On or before the last Saturday of December, 1895, I promise to pay seventy-two & 86 100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9729.—On or before the last Saturday of January, 1896, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in

Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9730.—On or before the last Saturday of February, 1896, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9731.—On or before the last Saturday of March, 1896, I promise to pay seventy-two & 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

94 No. 9732.—On or before the last Saturday of April, 1896, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9733.—On or before the last Saturday in May, 1896, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9734.—On or before the last Saturday of June, 1896, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9735.—On or before the last Saturday of July, 1896, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9736.—On or before the last Saturday of August, 1896, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9737.—On or before the last Saturday of September, 1896, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9738.—On or before the last Saturday of October, 1896, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9739.—On or before the last Saturday of November, 1896, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association, at its office, in

Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

95 No. 9740.—On or before the last Saturday of December, 1896, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9741.—On or before the last Saturday of January, 1897, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9742.—On or before the last Saturday of February, 1897, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9743.—On or before the last Saturday of March, 1897, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9744.—On or before the last Saturday of April, 1897, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9745.—On or before the last Saturday of May, 1897, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9746.—On or before the last Saturday of June, 1897, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9747.—On or before the last Saturday of July, 1897, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

96 No. 9748.—On or before the last Saturday of August, 1897, I promise to pay thirty-eight and 36-100 dollars, $38 36-100, to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9749.—On or before the last Saturday of September, 1897, I promise to pay thirty-eight and 36-100 dollars, $38 36-100, to the order of the Eastern Building and Loan Association at its office in

Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

No. 9750.—On or before the last Saturday of October, 1897, I promise to pay thirty-eight and 36-100 dollars, $38 36-100, to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y. Value received. Bailey, Tenn., May 1st, 1891. H. L. Bedford.

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit thereof.

Proceedings had in said court at a regular term thereof, begun and held for its November term, A. D 1895, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 7 day of May, A. D. 1896, in the following cause, to wit:

EASTERN BUILDING & LOAN ASSOC'N, Plaintiff,
vs.
L. L. BEDFORD, LOU M. BEDFORD, Defendant-. } No. 487.

For satisfactory reasons to the court appearing, it is hereby ordered and decreed by the court that the foregoing cause in equity be and it is hereby continued for orders to the next term of this court.

No. 487. Circuit court of the United States, western district of Tennessee. E. B. & L. Association *vs.* H. L. Bedford *et al.* Order of court. Entered and filed 7 day of May, A. D. 1896. John B. Clough, clerk.

97 Circuit Court of the United States, Western District of Tennessee.

EASTERN BUILDING & LOAN ASSOCIATION
vs.
H. L. BEDFORD and WIFE. } No. 487.

Deposition of W. H. Emery. Filed Oct. 17th, 1896.

The deposition of W. H. Emery, a witness for complainant in the above-styled cause, taken on interrogatories, to be read at the trial of said cause.

Notice and all formalities waived and the right to except to said deposition for matters of incompetency and irrelevancy is, by agreement of counsel, alone reserved.

BUCHANAN & MINOR.

Q. 1. State your name, residence and present occupation. If you are connected in any way with the complainant association, in what capacity are you connected with it?

Circuit Court of the United States, Western District of Tennessee.

EASTERN BUILDING & LOAN ASSOCIATION
vs.
H. L. BEDFORD and WIFE. } No. 487.

STATE OF NEW YORK, *Northern District, County of Onondaga,* } *ss:*

W. H. EMERY, the witness called on behalf of the plaintiff herein, and residing at the city of Syracuse, N. Y., more than one hundred miles from the place where this cause is to be tried, being duly cautioned and sworn to tell the whole truth, and being carefully examined, deposes and says as follows:

1. To the first interrogatory he says: My name is W. H. Emery; I reside at No. 312 Merriman avenue, in the city of Syracuse, N. Y., and am assistant secretary of The Eastern B. & L. Association, the complainant association.

Q. 2. Please refer to the account of H. L. Bedford, which is
98 attached to the original bill in this cause as Exhibit C, and which is sworn to. Explain the various items composing said account and state what each is for.

2. To the second interrogatory he says: Exhibit "C" is a statement showing the balance owing by H. L. Bedford to the complainant association on the 29th of April, 1895, on a loan or advance of $4,600.00, the same being the maturity value of forty-six shares of stock held by him in the complainant association and represented by certificate No. 4773, said advance or loan being made under date of May 1, 1891, and known as loan No. 125. On the debit side the first item, to wit, $4,600.00 represents the amount of the advance or loan. The next item of $1,675.09 is the amount of monthly payments of dues on said shares and interest (5 per cent.) and premium (5 per cent.) defaulted and in arrears at the date of said statement, the same being represented by notes of said Bedford secured by his mortgage, amounting to $72.83 each, the first defaulted note falling due on the last Saturday of June, 1895, and one each succeeding month up to and including the last Saturday of April, 1895, each of said notes of $72.83 includes the monthly dues payable on said certificate of shares on the last Staturday of each month, the monthly dues amounting to $34.50, and the balance of each of said notes being the monthly interest and premium on said loan at the rate of five per cent. per annum respectively. The item of $211.60 is the amount of fines imposed by the charter and by-laws of the complainant association on account of default in the payment of the twenty-three notes past due and unpaid on the 29th day of April, 1895, as already stated. Shares advanced or loaned upon are termed pledged shares, and borrowing members in case of default are required to pay a fine for each monthly default at the rate of 20 cents per share on each $100.00 loaned, and in this case therefore the fine for defauilting on any monthly payment is the sum of $9.20. $6,486.69 represents the total indebtedness with which Bed-

ford was chargeable at the date of the statement, April 29, 1895. On the contra side of the statement Bedford is credited with $966.00. This represents the total amount of dues actually paid by him on the aforesaid forty-six shares of stock. As I have already stated, the monthly dues payable on these shares amount to $34.50. As this certificate of shares was a February, 1891, issue, and payments were made down to and including May, 1893, twenty-eight monthly payments of dues were actually made, or in all the sum of $966.00. $73.15 represents the dividend to which said shares were under the by-laws entitled to in case of withdrawal after the payment of dues for May, 1893, had been made and
99 prior to default on the June, 1893, payment, the same being at the rate of seven per cent. per annum on $966.00 for the average time that said money was in the possession of the complainant association, to wit, thirteen months. $793.50 represents the aforesaid monthly dues embraced in the monthly notes of Bedford and included and charged against him in this statement, Exhibit "C" in the item of $1,675.09. The $214.35 represents the dividends to which said dues amounting to $793.50, if actually paid, would be entitled to in the event of withdrawal at the time said statement was made together with an additional dividend to which the aforesaid sum of 966.00 would be entitled since the first of June, 1893, computed at the rate of eight per cent. per annum for the average time. It will be observed that the total of $966.00, $73.15, $793.50, and $214.35 is the sum of $2,047.00; and this sum represents the withdrawal value, that is the dues and dividends on forty-six shares of stock issued in February, 1891, and assumed to have been paid on down to and including the month of April, 1895, and then withdrawn on the date of statement, to wit, April 29th, 1895, dividends being computed on the total of said dues at the rate of eight per cent. per annum for the average time, or twenty-four and one-half months. In addition to the running premium of five per cent. heretofore mentioned by me, Bedford bid what is termed a gross premium of ten per cent. for the privilege of obtaining the preference for an advance of his said shares, which said gross premium amounted to $460. The shares in question were estimated to mature in seventy-eight months, and it has been the practice of this association to treat said gross premium as being paid on the theory that the loan would run that length of time, and that $\frac{1}{78}$ of said premium is earned each month from the date of the issuance of the shares; as at the time this statement, Exhibit "C," was made, the certificate of shares was fifty-one months old, there remained twenty-seven months to run, and therefore $\frac{27}{78}$ of the gross premium of $460.00 was unearned, amounting to the sum of $159.22. There is an error in the computation of the monthly interest and premium of three cents too much, and therefore the notes — were given on this loan should have been for $72.83 instead of $72.86. Twenty-five notes of $82.86 each were actually paid by Bedford, and as there was an overpayment of three cents in each case, the total overpayment amounted to 75 cents, for which credit is given in

said statement, Exhibit "C." As the total items of debit
100 amount to $6,486 69 and the total credits to $2,206.97 the balance owing at the date of the statement, Exhibit "C," was the sum of $4,279.72.

Q. 3. If you know of any other facts which would be material to the rights of the parties to this cause, will you state them as your answer to this interrogatory?

Cross-examination waived for present, but right to cross-examine in future is reserved.

FRAZER & HEATH,
For Defendants.

3. To the third interrogatory he says: A member who has defaulted in the payment of his monthly dues is not in good standing, and is not under the by-laws entitled to withdraw his shares; however, in this case credit has been given not only for all dues on the shares actually paid, but credit has also been given for the earning to which they would be entitled if in good standing, as the loss of the use of the same if regularly paid, has in a measure been made up from the fines charged for the non-payment.

W. H. EMERY.

Subscribed and sworn to before me this 13th day of October, A. D. 1896.

[SEAL.] ALBERT P. FOWLER,
Notary Public.

Circuit Court of the United States, Western District of Tennessee.

EASTERN B. & L. ASSOCIATION
vs.
H. L. BEDFORD and WIFE. } No. 487. In Equity.

STATE OF NEW YORK,
Northern District, County of Onondaga, } *ss.:*

I hereby certify that on the 13th day of October, 1896, before me, Albert P. Fowler, a notary public, in and for the county of Onondaga and State of New York, at my office, No. 626 Kirk block, in the city of Syracuse, county of Onondaga and State of New York, personally appeared, pursuant to the annexed agreement, W. H. Emery, Esq., the witness named therein. No appearance as counsel for either said plaintiff or said defendant, and the said W. H.
101 Emery being by me first duly cautioned and sworn to testify the whole truth, and being carefully examined, deposed and said as appears by the deposition hereto annexed. And I further certify that said deposition was then and there reduced to writing by me, and was, after it had been reduced to writing, subscribed by the witness, and the same being retained by me for the purpose of sealing and directing the same to the clerk of the court as required by law. And I further certify that the reason why said deposition

was taken was that the said witness resides at the city of Syracuse, N. Y., more than one hundred miles from Memphis, Tennessee, the place where this cause is to be tried. And I further certify that I am not of counsel or attorney to either of the parties, nor am I interested in the event of the cause. And I further certify that the fee for taking said deposition, $5.00, has been paid to me by the plaintiff, and the same is just and reasonable.

In testimony whereof I have hereunto set my hand and official seal at the city of Syracuse, in the county of Onondaga and State of New York, this 13th day of October, A. D. 1896.

ALBERT P. FOWLER,
Notary Public.

[SEAL.]

Circuit Court of the United States, Western District of Tennessee.

THE EASTERN BUILDING & LOAN ASSOCIATION OF SYRACUSE, New York,
vs.
H. L. BEDFORD ET AL. } No. 487.

Deposition of H. L. Bedford. Filed Oct. 23, 1896.

Deposition of H. L. Bedford taken on behalf of defendants in the above cause.

Int. 1. State your name, age, and present residence and how long you have so resided.

Answer to 1st interrogatory. H. L. Bedford; aged, 60 years. I reside now in Shelby county, Tennessee, and have so resided for about (40) forty years.

Int. 2. Are you the defendant in this cause? Are you acquainted with the Eastern Building & Loan Association of Syracuse,
102 New York, and if so, how did you become acquainted with it? Was it directly or by intercourse with said association through its agents? If through such agents, where was such agency and who were the agents?

Answer to 2d interrogatory. I am the defendant in this case. I am acquainted with the Eastern Building & Loan Association of Syracuse, New York. I became acquainted with it through its agents in Shelby county, Tennessee. I became so acquainted through its said agents The said agents were H. B. Martin and J. H. T. Martin and the agency was in Shelby county, Tennessee, where H. B. Martin and J. H. T. Martin lived.

Int. 3. I call your attention to the following papers referred to in this case and made exhibits to the deposition of D. A. Pierce herein, viz:

(1.) An application for shares in the Eastern Building & Loan Association of Syracuse, New York, the same being for 46 shares therein. The said application is Exhibit B to Pierce's deposition. The same is dated Jan'y 23, 1891, and is signed "H. L. Bedford," and witnessed by H. B. Martin and said paper says on its face "Agent J. H. T. Martin."

(2.) Application for loan from the Eastern Building & Loan Association of Syracuse, N. Y., Exhibit D, to Pierce's deposition. This application is dated March 20, 1891, and is signed, H. L. Bedford and witnessed by H. B. Martin and the same was sworn to by H. L. Bedford, March 20, 1891, before H. B. Martin, notary public. On this same paper is an "appraisers' report" signed by Geo. E. Rudisell, C. B. Galloway and J. H. T. Martin, who swore to the same May 5, 1891, before H. B. Martin, notary public. This application is endorsed on the back "Approved, May 18, 1891."

(3.) "Application for an advance" Exhibit E to Pierce's deposition directed "to the board of directors of the Eastern Building & Loan Association of Syracuse, N. Y." This application is signed H. L. Bedford and is witnessed by J. H. Martin. It says "At a regular meeting of your board held May 18, 1891, having obtained the preference for an advance on 46 shares of No. 4773 of your association at a premium of ten per cent. I now respectfully request the advance be granted. I hereby agree to comply with the charter and by-laws of your association and all requirements defined by your committee of the board of directors." Pasted to this application is an affidavit of H. L. Bedford made before J. H. T. Martin, June 20th, 1891.

(4.) Draft of Eastern Building & Loan Association of
103 Syracuse, New York, in favor of H. L. Bedford, No. 4140, on Trust & Deposit Co., of Onondaga, Syracuse, N. Y. Endorsed: H. L. Bedford.

(5.) Mortgage of H. L. Bedford and Lou M. Bedford to Eastern Building & Loan Association of Syracuse, N. Y., dated May 1, 1891, acknowledged by those parties June 18, 1891, and filed for registration June 20, 1891.

(6.) Certificate for 46 shares of stock $4,600, No. 4773, in Eastern B. & L. Association of Syracuse, N. Y., dated Feb'y 2d, 1891.

The following appears on the back of said certificate, viz: "The within-mentioned shares of stock in the Eastern Building & Loan Association of Syracuse, N. Y., are hereby withdrawn and I have this day received the sum of forty-six hundred dollars in full the amount due me by reason of such withdrawal.

"Dated at Memphis, 7, 16, 1891.

"H. L. BEDFORD."

Witness:
J. H. T. MARTIN.

Please state whether you signed the various papers and made affidavits above referred to. The application for shares of date January 23, 1891; the application for loan dated March 20, 1891, and the affidavit attached thereto of March 20, 1891, and the appraisers' report. Sworn to May 5, 1891, by them, the application for advance and the affidavit pasted thereto of June 20, 1891. All appear to be on printed forms which were filled up—who had these forms before and at the time they were filled up? Were those and similar forms held by any persons as agents of the Eastern Building & Loan Association of Syracuse, N. Y., and if so whom and for

what purpose were they held and who had them filled up as they now appear to be?

Answer to 3d interrogatory. I signed the various papers and made the affidavits, H. B. Martin and J. H. T. Martin were in the same office. They had the forms before they were filled up, and at the time they were filled up. They had these and similar forms as the representatives of the Eastern Building & Loan Association of Syracuse, New York, for the purpose of getting up business. I suppose this was so as to the business of others but know it was so, so far as I am individually concerned about my business transactions with them. The Martins had the papers filled up. I did not—Exhibit B, the application for shares was filled up by H. B. Martin, the application for loans was filled up by H. B. Martin, the affidavit of June 20, 1891, was filled up by J. H. T. Martin.

104 The papers I executed were executed in Shelby county, Tenn.

Int. 4. Where were all the papers hereinbefore referred to executed? In what county and State? After they were executed by you what did you do with the various papers signed by you and to which your attention has been called? Did you send them yourself to the Eastern B. & L. Ass'n or return them to any persons as agent of the Eastern B. & L. Ass'n, and if so what persons? Were your transactions and intercourse with the Eastern B. & L. Ass'n of Syracuse carried on directly with, of or through its agents? If through agents, who were they and at what place?

Answer to 4th interrogatory. The papers were executed in Shelby county, Tennessee, that were signed by me. After I executed the papers, I returned to the Martins as agents of the Eastern Building & Loan Association of Syracuse, N. Y. I mean H. B. Martin and J. H. T. Martin. I did not send the papers myself to the association. My intercourse and transactions with the Eastern Building & Loan Association of Syracuse, New York, were carried on with it through its agents, H. B. Martin and J. H. T. Martin, in Shelby county, Tennessee.

Int. 5. What connection, if any, had H. B. Martin and J. H. T. Martin, whose names appear on some of the papers referred to, with the Eastern Building & Loan Association of Syracuse, N. Y.? Were they agents for it or not at the time you applied for shares or membership therein and before and after that time?

Answer to 5th interrogatory. I can safely say H. B. Martin and J. H. T. Martin were the agents of the Eastern B. & L. Association of Syracuse, New York, at, before and after I applied for shares, or membership, and had the transactions in question. The company recognized them as agents and ratified what they did, and they were represented to me as agents of that association.

Int. 6. How was the Eastern B. & L. Association of Syracuse, N. Y., represented in Shelby county, Tennessee, when you first applied for shares therein and before and after that time, and was it or not carrying on business in Tennessee at those dates?

Answer to 6th interrogatory. That association at the times mentioned was represented in Shelby county, Tennessee, by its agents,

H. B. Martin and J. H. T. Martin, and was also by a local board in Shelby county, Tennessee, composed of different people in that county and State. The Eastern Building & Loan Association of Syracuse, New York, was carrying on business in Shelby county, Tennessee, at the times I had the transactions.

105 Int. 7th. Did you have the various transactions you had with the Eastern Building & L. Ass'n of Syracuse, N. Y., in consequence of or in connection with its carrying on business in Tennessee, at those times or not? Was it carrying on business then?

Answer to 7th interrogatory. I had the various transactions with the Eastern Building & Loan Association of Syracuse, N. Y., in consequence of and in connection with its carrying on business in Tennessee at those times. It was so carrying on business.

Int. 8th. Did you ever make any bid as against anybody else for the amount which the Eastern Building & Loan Association of Syracuse, N. Y., loaned you, or was there simply a fixed premium of ten per cent. deducted when the loan was made?

Answer to 8th interrogatory. I did not make any bid as against anybody else. There was a deduction of ten per cent. as the papers show.

Int. 9th. The mortgage executed by you of date May 1, 1891, recites payment by the Eastern B. & L. Ass'n of $4,600 and said mortgage says it is to secure $5,683.08, evidenced by 78 notes given by you. The paper signed by you at Memphis, "7, 16, 1891," being July 16, 1891, and being on the certificate for shares acknowledges a receipt by you of $4,600. Please state whether you ever received any $4,600 of the Eastern B. & L. Ass'n; state how much you actually received of that association and when and how, and did you receive it from that association directly or from any one at any place as its agent? If so from whom and where?

Answer to 9th interrogatory. I did not receive $4,600. I only received a draft of the Eastern B. & L. Association dated July 8, 1891, on the Trust & Deposit Co., of Onondaga, Syracuse, New York, for $4,140. I received this draft soon after its date and got the money on it from the Union & Planters' bank at Memphis, Tennessee, about July 16, 1891. I got the draft through either H. B. Martin *of* J. H. T. Martin, in Shelby county, Tennessee. The difference between the $4,600 and the draft, $4,140, was the fixed premium or deduction of ten per cent. which was taken out by the Co. I got the draft from Martin as agent of the Eastern B. & L. Ass'n, in Shelby county, Tennessee.

Int. 10th. When you applied for the shares and applied for the loan or advance, to whom did you apply and at what place?

Answer to 10th interrogatory. I applied either to H. B. Martin or J. H. T. Martin, the agents at Memphis, Tennessee. H. B.
106 Martin first called my attention to the Eastern B. & L. Association of Syracuse, N. Y., which I did not know of before.

Int. 11th. Who appointed the appraisers, Geo. C. Rudisell, C. B. Galloway and J. H. T. Martin, and were they or not residents of

Shelby county, Tennessee? Did you appoint them and for whom were they acting?

Answer to 11th interrogatory. I do not know who appointed the appraisers, but suppose that the local board did. The appraisers were residents of Shelby county, Tennessee. I did not appoint them, they were acting for plaintiff.

Int. 12th. For whom were H. B. Martin and J. H. T. Martin, in all of the transactions testified by you, acting; were they acting for you or for the Eastern Building & Loan Association of Syracuse, N. Y.?

Answer to 12th interrogatory. H. B. Martin and J. H. T. Martin were not acting for me. They were acting for plaintiff or the local board, for which I cannot say.

Int. 13th. When you made your application for shares in the Eastern B. & L. Ass'n of Syracuse, and your application for a loan from them were H. B. Martin and J. H. T. Martin, either or both engaged as agents of the Eastern B. & L. Ass'n of Syracuse, N. Y., in Shelby county, Tennessee, in getting up business for said association and were your transactions with that association in consequence of the effort of such agents or not?

Answer to 13th interrogatory. My transactions were with H. B. Martin and J. H. T. Martin as agents of plaintiff, and in consequence of the efforts of such agents. The Martins were engaged in getting up business for the plaintiff and got up the business with me.

Int. 14th. It appears that you gave 78 notes to the Eastern B. & L. Ass'n of Syracuse, N. Y., dated May 1st, 1891, and falling due monthly, the first note due last Saturday of May, 1891, and monthly thereafter; were not all of these notes represented and embraced in the $4,600 or $5,683.08 secured by the mortgage you executed? If so, explain as to the notes that fell due before you got the money advanced you by the Eastern B. & L. Ass'n and which money was included in said notes. Where were all these notes executed and to whom were they delivered by you and who attended to the matter for the Eastern B. & L. Ass'n?

Answer to 14th interrogatory. The $5,683.08 represents the 78 notes secured by the mortgage. The notes were all executed in Shelby county, Tennessee. After they were executed they were de-
107 livered to the Martins, in Shelby county, Tennessee, as agents of the plaintiff. These same agents attended to the matter for the plaintiff. On July 15th, 1891, I gave J. H. T. Martin a check on the Union & Planters' Bank of Memphis for $192.08. I had previously paid $34.50 for dues on stock in the Eastern B. & L. Ass'n, for May, 1891. On July 16th, 1891, my notes for $72.86, each due in May and June, 1891, were past due and the note for $72.86 falling due in July, 1891, would soon be due. These 3 notes amounted to $218.58. I was credited with the $34.50. I had paid and I gave the check for $192.08 to pay the balance on the notes for May, June and July, 1891. I annex the check hereto as Exhibit A. The $192.08 was intended for the balance, but there was a slight error in amount. I can't explain now the discrepancy.

Int. 15th. How did you pay the various notes that you did pay—to what person and were the notes in Memphis when you paid them?

Answer to 15th interrogatory. I paid at first the agents, H. B. Martin and J. H. T. Martin, in Shelby county, Tennessee, and took up the notes from them. Afterwards I paid the money to E. B. Lacey, a cashier of the Shelby county, Tennessee, savings bank. I take it for granted I was notified to do so. I don't know whether the notes were in Memphis or not when I paid Lacey, but I afterwards got them, if they were not. I do remember once when I made a payment to Lacey that the note was not here, at which I was surprised. My general transactions with Lacey were to send in a check and afterwards get the note for which it was a payment, but as to the one payment I mention I called in person to pay and the note was not there.

Int. 16th. In returning notes to you that were paid, and in sending you papers of any kind, did you receive them directly from the association or from its agents? And were all of your transactions with the association or with its agents?

Answer to 16th interrogatory. While the Martins were acting as agents of plaintiff, all of my transactions with plaintiff were through them and I paid notes to them and got notes when I paid from them. I have already explained as to Lacey as well as I can.

Int. 17th. What understanding, if any, did you have before and at the time the notes were executed by you as to where the sums represented by the notes were to be paid and with whom was such understanding?

Question and answer objected to by plaintiff, because the notes and contract must speak as to this.

Answer to 17th interrogatory. I thought I could make the
108 payments here in Memphis, Tennessee, and did do so as I have stated. I told one of the Martins that I did not want to be troubled in getting exchange to send on to New York.

Cross-examination by Mr. MINOR:

Cross-int. 1. I hand you the following papers, which have been filed in this suit: (1) Mortgage on certain lands in Shelby county, executed by you and Mrs. Lou M. Bedford to the Eastern B. & L. Association, to secure payment of a debt due by you to the said association; (2) a lot of notes bound together, fifty-three (53) in number, all dated May 1, 1891, executed by you, payable to said association; fifty of them for $72.86 and the last three (3) for $38.36. Did you sign and execute said papers; and did your wife, L. M. Bedford, join you in the execution of the mortgage?

Ans. Yes.

Cross-int. 2. Did you sign and execute all the papers which are exhibits to the deposition of D. A. Pierce, and which purport to have been executed by you, and are the signatures "H. L. Bedford" on all of said papers your genuine signatures?

Ans. Yes. They are my genuine signatures.

Cross-int. 3. Did you know what you were signing when you signed all the papers mentioned in the foregoing questions? Were you aware at the time of executing them of what their contents and purport were?

Ans. Yes, but to tell the truth about it, I didn't pay a great deal of attention to the matter.

Cross-int. 4. You don't claim then that there was any misrepresentation, concealment, or anything approaching found about the transactions had by you with the complainant or with its agents?

Ans. No. My only misapprehension was as to the powers of the local board. I thought that they had greater powers than they actually had.

Cross-int. 5. What efforts did you make to find out the real powers of that board?

Ans. None at all. I had known Martin a long time and simply relied upon him; did not investigate as much as I probably should have done.

Cross-int. 6. You knew all the time that the Martins were agents merely; that the complainant association was a New York concern and had its headquarters in New York State, and that it was Martin's principal?

Ans. Yes.

109 Cross-int. 7. When you say in your answer to direct Int. 6, that the complainant association was doing business in Shelby county, Tenn., at the time you had your transactions with them, do you mean to state a fact or an opinion merely? If you state it as a fact, then upon what do you base your knowledge of the fact?

Ans. I mean to state a fact. I base my knowledge upon their agents holding themselves out and upon their having a local board and the actual transactions with myself.

Cross-int. 8. Do you know as a fact that the association did any business in Tennessee other than what they did with you?

Ans. I have been informed that the association has filed a bill against Martin.

Cross-int. 9. Do you know the date of any transaction the association had with Martin?

Ans. No. Martin told me he was in the association at the time I applied to him.

Cross-int. 10. You do not know of any other business the association did in Tennessee?

Ans. Not of my own knowledge.

Cross-int. 11. And do you — any of the details of the transaction with Martin, when it was made—what its terms, &c.?

Ans. No.

Cross-int. 12. When you paid the amount due on your note each month to one of the Martins, did you make that payment personally or by letter? And did you get the note back immediately or later?

Ans. My usual course was to pay by check which I would send generally by mail and then the note would come back. Martin told me he had the note and to send the money in to him. The note generally came to me too soon after my sending my check for it to

have come from New York after my payment. (Asked at request of Mr. Heath, counsel for defendants.)

Cross-int. 13. How many notes have you paid?

Ans. I paid twenty five (25); the last one I paid was the one due in May, 1893; the first one I failed to pay is the one due on June, 1893, and is the first remaining in the book of notes filed in this cause and hereinafter referred to—each paid by me was $72.86.

Cross-int. 14. In your answer you deny the execution of the mortgage, and of the various papers which have since made exhibits to Pierce's deposition in this cause? And your answer is sworn to. Do you mean those denials are true, or are they purely formal?

Ans. I didn't have the papers before me so couldn't say at
110 the time as to whether the statements in the bill were accurate or not. I have already in this testimony referred to the papers I executed and acknowledged their genuineness, the papers being now before me. And further deponent saith not.

H. L. BEDFORD.

Oath waived:
MINOR.

Subscribed and sworn to before me at Memphis, Tennessee, this January 11th, 1898.

J. B. CLOUGH,
U. S. Com'r.

EXHIBIT A.

No. —. MEMPHIS, TENN., 7, 16, 1891.

Union and Planters' bank

Pay to the order of J. H. T. Martin, one hundred ninety-two $\frac{8}{100}$ dollars. $192.08.

H. L. BEDFORD.

Endorsed: J. H. T. Martin.

UNITED STATES OF AMERICA, }
Western Division of the Western District of Tennessee. }

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its May term, A. D. 1896, at the United States courthouse in the city of Memphis, in said district, on to wit, the 4th day of November, A. D. 1896, in the following cause, to wit:

EASTERN BUILDING & LOAN ASS'N, Plaintiff, }
vs. } No. 487.
H. L. BEDFORD, LOU M. BEDFORD, Defendants. }

For satisfactory reasons to the court appearing it is hereby ordered by the court that the foregoing case be and it is hereby continued to the next November term of the court.

111 No. 487. Circuit court of the United States, western district of Tennessee. E. B. & L. Association *vs.* H. L. Bedford *et al.* Order of court. Entered and filed 4th day of November, A. D. 1896. John B. Clough, clerk.

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its November term, A. D. 1896, at the United States court-house in the city of Memphis, in said district, on, to wit, the 20th day of May, A. D. 1897, in the following cause, to wit:

EASTERN BUILDING & LOAN ASS'N, Plaintiff,
vs.
H. L. BEDFORD, LOU M. BEDFORD, Defendants. } No. 487.

For satisfactory reasons to the court appearing, it is hereby ordered by the court that this cause be continued to its next term.

No. 487. Circuit court of the United States, western district of Tennessee. E. B. & L. Association *vs.* H. L. Bedford *et al.* Order of court. Entered and filed 20th day of May, A. D. 1897. John B. Clough, clerk.

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its May term, A. D. 1897, at the United States
112 court-house in the city of Memphis, in said district, on to wit, the 28th day of August, A. D. 1897, in the following cause, to wit:

EASTERN BUILDING & LOAN ASS'N, Plaintiff,
vs.
H. L. BEDFORD, LOU M. BEDFORD, Defendants. } No. 487.

For satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing cause be and it is hereby continued for orders to the next term of this court.

No. 487. Circuit court of the United States, western district of Tennessee. E. B. & L. Association *vs.* H. L. Bedford *et al.* Order of court. Entered and filed 28 day of August, A. D. 1897. John B. Clough, clerk.

Circuit Court of the United States, Western District of Tennessee.

EASTERN BUILDING & LOAN ASS'N
vs.
H. L. BEDFORD and WIFE. } No. 487.

Stipulation. Filed January 3, 1898.

In this cause it is agreed that the following statements are true and may be taken as true for the purposes of this case:

For defendant, that the following mortgages appear of record in the office of register of Shelby county, Tenn. The mortgagee in said mortgages is the complainant association. The said mortgages convey land lying in said county and State and were executed on the dates hereinafter named.

1. Mortgage from Wm. Short to Eastern B. & L. Association, dated June 1, 1891, acknowledged before H. B. Martin, notary public, in Shelby county, Tenn., June 29, 1891; filed for record June 29, 1891; recorded in Book 206, page 310. Same was to secure 78 notes aggregating $1,482 78, dated June 1, 1891, said notes being payable monthly to complainant association at Syracuse, N. Y.

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2. Mortgage from J. H. T. Martin to Eastern B. & L. Association, dated Sept. 1, 1890; acknowledged before said H. B. Martin, September 22, 1890, in Shelby county, Tenn.; filed for record Sept. 22, 1890, and recorded in Book 204, page 87. Same was to secure 78 notes, dated September 1, 1890, made by said J. H. T. Martin and payable monthly to complainant association at Syracuse, N. Y.; notes aggregating $6,795.36.

3. Mortgage by Thos. E. Edwards to Eastern B. & L. Association, dated Oct. 1, 1890; acknowledged before J. H. T. Martin, a notary public, in Shelby county, Tenn., Nov. 25, 1890; filed for record Nov. 25, 1890, and recorded in Book 197, page 485. Same was to secure 78 notes, aggregating $2,718.30, dated Oct., 1890; payable monthly to complainant association at Syracuse, N. Y.

4. Mortgage to said association by Emma E. and Geo. E. Rudisell and W. B. McMahon, dated Dec. 1, 1890; acknowledged before said J. H. T. Martin, in Shelby county, Tenn.; filed for record Dec. 8, 1890, and recorded in Book 203, page 204. Same was to secure 78 notes, aggregating $4,201.08, payable monthly to said association at Syracuse, N. Y.; notes all dated Dec. 1, 1890.

5. Mortgage to said association by said J. H. T. Martin, dated Jan'y 1, 1891; acknowledged before said H. B. Martin, in Shelby county, Feb'y 12, 1891, and recorded in Book 203, page 392, having been filed for record Feb'y 12, 1891. Same was to secure 78 notes of said J. H. T. Martin, aggregating $8,293.74, payable monthly to said association at Syracuse, N. Y.; said notes were dated Jan'y 1, 1891.

6. Mortgage to said association by H. L. and Louisa S. Tresevant, dated Jan'y 1, 1891; acknowledged before said J. H. T. Martin, in Shelby county, Jan'y 26, 1891; filed for record Jan'y 26, 1891, and

recorded in Book 203, page 313. Same was to secure 78 notes aggregating $3,706.56; payable to said association at Syracuse, N. Y. All notes dated Jan'y 1, 1891, and payable monthly.

7. Mortgage to said association by Annie E. and Edward O. Jenkins, dated Apr. 1, 1891; acknowledged by E. O. Jenkins in Texas, May 9, 1891, and by Annie E. Jenkins before said H. B. Martin, in Shelby county, May 13, 1891; filed for record May 13, 1891, and recorded in Book 205, page 177. Same was to secure 78 notes, aggregating $1,235.52; all dated Apr. 1, 1891, and payable to said association at Syracuse, N. Y., monthly.

114 8. Mortgage to said association by R. B. Pegram and wife, dated July 1, 1891; acknowledged before said H. B. Martin, in Shelby county, Tenn., July 23, 1891; filed for record July 23, 1891, and recorded in Book 205, page 266. Same was to secure 78 notes aggregating $2,639.06; all dated July 1, 1891, and payable monthly to said association at Syracuse, N. Y.

9. Mortgage to said association by Gilbert and Mollie E. Sims, dated July 1, 1891; acknowledged before said H. B. Martin in Shelby county, Tenn., Aug. 8, 1891; filed for record Aug. 20, 1891, and recorded in Book 206, page 380. Same was to secure 78 notes aggregating $551.45; payable monthly to said association at Syracuse, N. Y., all the above mortgagors were residents of Shelby county, Tenn.

For complainant: All of the foregoing mortgages were executed to secure loans obtained by the mortgagors from said association on lands lying in Shelby county, Tenn. The loans were obtained from said association through the same process as that by which the defendant Bedford obtained his.

The borrowers all first become stockholders in said association. The date of the borrower's application for shares was in every one of the above instances at least three months prior to the date of his mortgage and notes; and the shares were issued to each borrower at least three months before the date of his mortgage and notes, and in the three following instances of those above named the dates were as follows: R. B. Pegram; application for shares dated March 25, 1891, date of issuance of shares April 1, 1891, application for loan dated April 13, 1891. Gilbert Sims, application for shares dated Aug. 16, 1890, shares were actually issued to him Aug. 24, 1890, under date of September 1, 1890, application for loan dated May 23, 1891. Wm. and Fannie E. Short, application for shares dated Nov. 22, 1890, shares issued Nov. 25, 1890, application for loan dated May 11, 1891. Annie E. and Edward O. Jenkins, application for shares dated Nov. 5, 1890, shares issued to them on Nov. 11, 1890, application for loan dated Aug. 8, 1890.

For defendants: That the complainant association filed a copy of its charter with the secretary of state of Tennessee on the 11th day of August, 1893, and filed an abstract of same in the office of the register of Shelby county, Tenn., soon after, viz., on Aug. 15, 1893. Nothing else was done by it towards complying with the act of March 26, 1891, or any of the acts.

For complainant: At the times hereinbefore referred to J. W. Bu-

chanan, an attorney practicing at the Memphis bar, was the
115 local attorney and legal adviser of the said association. When the act of March 26, 1891, was passed he advised said association not to sell any more stock in the State until complying with that act; but he further advised that it had a right to make loans on stock already sold in accordance with the rights given to every shareholder under his certificate. And to the best of his knowledge the association sold no more stock after the passage of said act. He does not know whether, after this period, the association made loans or sold stock to parties in Tennessee outside of Shelby county or not. The copy of the complainant's charter made Exhibit A to the deposition of D. A. Pierce, is a true and correct copy of complainant's charter as it existed at time of transactions with defendants, and said copy may be used as evidence in this cause, defendants hereby waiving all proof as to the correctness of said copy.

For defendants: That the complainant furnished its agent in Shelby county, Tenn., with printed blanks to be used in effecting loans and other transactions with parties in Tennessee. The application for shares (Ex. B to Pierce's dep.), the application for loan (Ex. D to Pierce's dep.), and the appraiser's report and affidavits of H. L. Bedford and the appraisers, the application for an advance (Ex. E to Pierce's dep.), and the affidavit of H. L. Bedford of June 20, 1891, attached to Pierce's deposition, were all upon blanks of this description. During the period covered by the transactions with defendants, the complainant made some loans in Tennessee outside of Shelby county. The methods pursued in regard to these loans were similar to those followed in defendant's case. Parties do not know how many of such loans were made.

BUCHANAN & MINOR,
Solicitors for Complainant.
R. M. HEATH, *For Defendants.*

Circuit Court of the United States, Western District of Tennessee.

EASTERN BUILDING & LOAN ASSOC'N
vs.
H. L. BEDFORD and WIFE. } No. 487.

Deposition — H. L. Bedford. Filed January 11, 1898.

Deposition of H. L. Bedford, taken on behalf of defendants in the above cause.

116 Int. 1. Are you the H. L. Bedford who is one of the defendants in this case and whose deposition was filed herein on October 23, 1896?

Ans. Yes.

Int. 2. Please state whether or not you knew of the existence of the various prohibitory acts passed by the legislature of the State of Tennessee in respect to foreign corporations desiring to carry on business in the State of Tennessee, being the acts of Tennessee legisla-

ture as follows, viz: Chapter 31 of Acts of 1877, passed March 19, 1877, and approved March 21, 1877, and appearing at page 44, etc., of the Acts of 1877; chapter 2 of the Acts of 1891, passed March 26, 1891, approved March 28, 1891, and appearing at page 17 of the Acts of 1891; chapter 95 of Acts of 1891, passed March 10, 1891, and approved March 17, 1891, and appearing at page 212 of the Acts of 1891; chapter 122 of the Acts of 1891, passed March 21, 1891, and approved March 26, 1891, and appearing at page 264 of the Acts of 1891, at the time you made the transactions with plaintiff referred to in this suit and in your previous deposition; did you know of above acts or any other acts of the Tennessee legislature on that subject when you had such transactions? And did you know or not that the Eastern Building & Loan Association of Syracuse, New York, had not complied with said laws of Tennessee when you had such transactions?

Ans. When I had the transactions with the Eastern Building & Loan Association of Syracuse, N. Y., I did not know of the existence of any laws passed by the legislature of the State of Tennessee in respect to foreign corporations doing business in Tennessee. I knew nothing about any such laws or that they were in existence until after my note due in June, 1893, fell due and I failed to pay it. After that I heard there were some laws of the Tennessee legislature or a decision of the supreme court of Tennessee on the subject, and after this suit was brought I had an examination made into the matter. I never knew until after this suit was brought what the Eastern Building & Loan Association of Syracuse, New York, had done as to complying with the Tennessee laws as to foreign corporations. After this suit was brought I had the matter examined into. I did not know there were any laws requiring the foreigh corporation to do anything preliminary to carrying on business in Tennessee or that there had been any failure to comply with such laws.

Int. 3. Do you know or can you set forth any other matter
117 or thing besides what you have testified to in this and your previous deposition which may be a benefit or advantage to the parties at issue in this cause or either of them or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. I don't know anything further.

Cross-examination:

Cross-int. 1. Where were you educated, Col. Bedford, and in what lines did your education extend?

Ans. At Lebanon, Tenn., and at the University of Mississippi. This was where I had my collegiate education.

Cross-int. 2. For what profession were you educated?

Ans. I was first educated for a civil engineer, afterwards for the profession of law. Then after I had secured the degree of A. B. at the Kentucky Military Institute. After studying civil engineering and the law I taught myself farming.

Cross-int. 3. Did you ever practice law?

Ans. I practiced for a while before the war.

Cross-int. 4. In the course of your law studies, did you ever learn the maxim "*ignorantia legis neminem excusat*"?

Ans. I heard of it.

Re-examination:

Re. int. 1. What war do you refer to when you say you practiced before the war?

Ans. I refer to the war between the States, from 1861 to 1865.

And further deponent sayeth not.

H. L. BEDFORD.

Subscribed and sworn to before me at Memphis, Tenn., this January 11, 1898.

T. B. CLOUGH,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular therm thereof,
118 begun and held for its November term, A. D. 1897, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 21st day of May, A. D. 1898, in the following cause, to wit:

EASTERN BUILDING AND LOAN ASSOCIATION, Plaintiff,
vs.
H. L. BEDFORD, LOU. M. BEDFORD, Defendant-. } No. 487.

For satisfactory reasons to the court appearing it is hereby ordered by the court that the foregoing case be and it is hereby continued to the ensuing May term of this court.

No. 487. Circuit court of the United States, western district of Tennessee. Order of court. E. B. and L. Association *vs.* H. L. Bedford *et al.* Entered and filed 21st day of May, A. D. 1898. John B. Clough, clerk.

Circuit Court of the United States, Western District of Tennessee.

EASTERN BUILDING AND LOAN ASSOCIATION
vs.
H. L. BEDFORD and WIFE. } No. 487.

Exceptions to Deposition. Filed May 25, 1898.

Exceptions of H. L. Bedford and Wife to the deposition of D. A. Pierce.

First. Defendants except to the answer to direct interrogatory 5½, when witness says, referring to H. L. Bedford and the shares or certificates of shares "he still retains them with the exception that they have been pledged by him to the complainants as security for the loan or advance thereon, made him by the complainant." The witness, in direct answer No. 20, refers to the following endorsement on the back of the certificate of shares issued to H. L. Bedford, viz: "The within mentioned shares of stock in the Eastern Building and Loan Association of Syracuse, N. Y., are hereby withdrawn,
119 and I have this day received the sum of forty-six hundred dollars in full of the amount due me by such withdrawal. Dated at Memphis, 7, 16, 1891. H. L. Bedford. (Seal.) Witness, J. H. T. Martin." The said witness referring in said twentieth answer to the above says it "is simply the form used at the time for pledging the stock as collateral to the loan in compliance with sec. 3 of article 14 of the by-laws printed on the back of said certificate." Defendants except to the portion of the answer to direct interrogatory 5½ quoted because the witness undertakes to testify as to the legal effect of the endorsement withdrawing the shares above quoted. It is for the court to construe such paper and endorsement and to say what the effect thereof was and is, and testimony on this point is incompetent.

Second. Defendants except to direct question and answer No. 7. In the interrogatory the witness is asked what the effect of the acceptance by H. L. Bedford of the certificate of shares was, and in his answer he attempts to show what the effect thereof was and is. This is purely a legal question to be determined by the court upon the facts of this case. In his answer the witness constitutes himself judge and undertakes to decide questions which only the court can decide.

Third. Defendants except to the statement of the witness in the answer to the 10th direct interrogatory, where the witness in undertaking to state why the loan or advance was made to H. L. Bedford says that he was to or did "pledge said shares of stock as collateral to said loan." The witness produced the instrument showing what Bedford did in regard to said shares, and it is for the court to construe said instrument and say what was the legal effect thereof and not for the witness to do so.

Fourth. Defendants except to that portion of direct interrogatory No. 11, saying, "and do you know of anything that affects the validity of such mortgage?" And to the answer of the witness

thereto, saying: "I know of nothing that affects the validity of said mortgage." The validity of the mortgage and of the transactions *are* to be determined by the court upon the facts in evidence and not by the testimony of the witness that the transactions were valid.

Fifth. Defendants except to direct interrogatory No. 12 and the answer thereto. The testimony of the witness as called for and given that Bedford was necessarily bound by the by-laws, rules and regulations of the association on becoming a member, and there is no way by which he might be exempt from their operation in whole or in part. It is for the court to determine whether Bedford was bound or not and witness' testimony that he was bound and could not be exempt is incompetent.

Sixth. Defendants except to direct answer 14 where the witness undertakes to say all the notes are due and that he knows of no equities against them or reasons why they should not be collected. It is for the court to determine whether the notes are due and collectible, and not for the witness to determine.

Seventh. Defendants except to the testimony of the witness in the answer to the 19th direct interrogatory, saying: "The loan to Bedford was made in conformity with the rules, regulations and by-laws of the association." The witness can only state what was done and it is for the court to determine whether the same was in conformity with said rules, etc.

Eighth. Defendants except to that part of the answer to direct interrogatory No. 20 referring to the agents of plaintiffs, saying: "They had no authority to bind the association in any way, being simply soliciting agents and had no authority to enter into any agreement in relation thereto," and to that part of same answer saying: "As will be seen from the foregoing, they were simply soliciting agents working upon a commission basis and having no power to enter into contracts or to incur any obligations for or on behalf of the association." Defendants further except to that part of said answer, saying: "The officers of the local board, however, had no authority to incur any obligations for or on behalf of the association," and to that part of said answer, saying that if persons "chose to remit through the local treasurer, it should be through him as agent for themselves and not for the association." The defendants further excepts to that part of the same answer referring to an "application by various persons of Memphis for a local-board charter for that city, from which it will also be seen that it was the express understanding and agreement that the local-board treasurer remitted as agent for the members who made payments to him and not as agent for the association." Defendants except to the testimony of the witness referred to above because it is for the court to determine whether the agents could bind the plaintiffs and to what extent, and that the witness in his testimony should be confined to a statement of the facts and not be allowed an expression of his judgment or opinion that the agents could in no way bind or affect the association.

Ninth. Defendants except to that part of answer to direct
121 interrogatory 20th, saying the paper signed by Bedford, dated at Memphis, 7, 16, 1891, is simply the form used at the time for pledging the stock as collateral." The paper in question does not purport to be a pledge, but an absolute withdrawal, and it is for the court and not the witness to construe said paper, and say what the effect thereof is.

Tenth. The defendants object to all testimony as contained in the deposition of said witness when he undertakes to give his opinion, because in cross answer No. 21 he shows he testifies as a lawyer. It is for the court to decide this case and the questions therein and not the witness and all expressions of opinion that plaintiff is right and defendants are wrong are excepted to.

R. M. HEATH, *Solicitor.*

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its May term, A. D. 1898, at the United States courthouse, in the city of Memphis, in said district, on, to wit, the third day of June, A. D. 1898, in the following cause, to wit:

EASTERN BUILDING & LOAN ASS'N, Plaintiff,
vs.
H. L. BEDFORD, LOU M. BEDFORD, Defendants. } No. 487.

This cause came on to be heard upon the exceptions of H. L. Bedford and wife, filed May 25, 1898, to the deposition — D. A. Pierce on file herein, and thereupon the court acting upon said exceptions overruled the first, third, ninth and tenth exceptions, to which action of the court the defendants, H. L. Bedford and wife, then and there excepted. The second, fourth, fifth, sixth and seventh exceptions were sustained, and the evidence objected to was excluded. The eighth exception was sustained, to this extent that all expression of opinion by the witness is excluded as evidence, but
122 the exception is overruled, so far as the witness testifies to the fact that there was no authority conferred on agents except as found in the by-laws of the Eastern Building and Loan Association of Syracuse, New York. The defendants H. L. Bedford and wife then and there excepted to the action of the court, in overruling this exception to any extent. The court overruled the first exception as to the evidence excepted to was explained by witness in direct answer No. 20. The third exception was likewise overruled as the evidence excepted to was explained in other parts of the deposition giving the facts. The tenth exception was overruled as being too general.

UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its May term, A. D. 1898, at the United States courthouse, in the city of Memphis, in said district, on, to wit, the 4th day of June, A. D. 1898, in the following cause, to wit:

EASTERN BUILDING & LOAN ASS'N, Plaintiff,
vs.
H. L. BEDFORD, LOU M. BEDFORD, Defendants. } No. 487.

This cause came on to be heard this day on the original bill, answer and replication, the exhibits and proof herein filed and the arguments and briefs of counsel, and it appearing to the court that the defendants executed to the complainant a certain mortgage as described in the bill and the exhibits thereto to secure the payment to complainant of the indebtedness therein described, and it further appearing that the defendants have not paid the said indebtedness, but therein made default as charged in the bill, and it further appearing to the court that there is no valid defense against the claim of complainant to foreclose said mortgage and collect said indebtedness of the said defendants, and it still further appearing to the court that the amount now due by the defendants to complain-

123 ant is readily ascertainable from the original bill and the exhibits thereto and the proof filed by complainant and that a reference to the master is not necessary for the ascertainment of said amount, and that said amount is five thousand and seventy-five $\frac{37}{100}$ ($5,075.37) dollars, the same being $4,279.72, with interest from April 29, 1875, the date of the account filed as exhibit to the bill to date. Now, therefore, the court being fully advised in the premises orders, adjudges and decrees that the said defendants are justly indebted to the complainant in the sum of $5,075.37, with interest from the date of this decree until paid together with all the costs of this cause and that the said complainant have and recover of the said defendants the said sum of $5,075.37 and costs of this suit for all of which let execution issue under the terms and provisions hereinafter made in this decree. It is further ordered, adjudged and decreed that the said sum of $5,075.37 is and the same is hereby declared to be a lien on the land and premises conveyed by the mortgage described in the bill, which said mortgage is in evidence in this cause and which land is known and described as follows, to wit: All tract or parcel of land situate in the 10th civil district of the county of Shelby, and State of Tennessee, bounded and described as follows: Beginning at the southwest corner of J. J. Bailey's "Mill place," thence north with the west line eighty-eight and one-half (88½) rods to center of M. & C. railroad; thence east along the center of said railroad fifty-four and one-

quarter (54¼) rods; thence south parallel with the west line eighty (80) rods to said Bailey's south line; thence west along said south line to the place of beginning, containing thirty acres of land more or less; also all that certain tract or parcel situate in said district, county and State bounded and described as follows, to wit: Beginning on the Winchester line at the east line of the John McSwine tract, thence west with the Winchester line three hundred and twenty (320) rods, to John C. McLemore's northeast corner; thence south with the section line two hundred and sixty (260) rods; thence east one hundred and twenty (120) rods; thence north one hundred and twenty (120) rods; thence east two hundred (200) rods to the middle of Center Hill road; thence north with said road one hundred and forty (140) rods to the place of beginning, containing three hundred and seventy (370) acres of land. The above-described premises being the same premises conveyed to said H. L. Bedford by W. B. Lauderdale and wife by deed of date February 10, 1886, and recorded in Book 166, page 406, of the records in the office of the register of Shelby county, Tennessee. Now, if
124 the said defendants shall within ninety days after the date of this decree pay and fully discharge the amount hereinbefore declared and adjudged to be due by them to complainant, to wit, the sum of $5,075.37, with interest from date of decree to time of payment, and shall pay and satisfy all costs of this cause, then the said land shall stand relieved of and released from the lien above declared, and the complainant shall execute and deliver *of* to defendants a quitclaim deed to said defendants for said land and premises and the said defendants shall stand acquit of all indebtedness to complainant which was embraced in its said bill of complaint in this cause. But if the defendants fail within ninety days next after the date of this decree to pay and satisfy the said sum of $5,075.37 hereinbefore adjudged to be due by them to complainant with interest from the date of this decree it is ordered and decreed that John B. Clough, who is hereby appointed special master for making the sale hereinafter provided for, shall, after having advertised the time, terms and place of sale for thirty days in some newspaper published in Shelby county, Tennessee, sell the above-described land and premises at public outcry at the front door of the custom-house in Memphis, Tennessee, within legal hours to the highest and best bidder under the terms of sale hereinafter provided, and it appearing that in the said mortgage the defendants, the makers thereof, expressly waived and relinquished all rights of dower or homestead in said land and premises and the right to redeem the same or any part thereof in case of foreclosure, now in order to bar any right of redemption it is ordered and decreed that the sale be made upon a credit of one-half in six months and one-half in twelve months, the purchaser to give his notes for the purchase-money secured by a lien upon the said land and by satisfactory personal security, and leave is hereby expressly granted to complainant to become a purchaser at said sale if its bid shall prove to be the highest and best and it *may* the amount of its bid with the indebtedness due it as above or so much of same as may

be necessary. The said John B. Clough, special master above named, shall turn over to the clerk of this court all said proceeds of said sale and the clerk shall out of the proceeds pay first a reasonable compensation to the said special master, which said compensation is to be hereafter fixed. Second, he shall pay all the costs of this cause; third, the amount hereinbefore adjudged to be due by defendants to complainant with interest from the date hereof to date of such application or so much thereof as the amount of the fund in his hands shall permit, and, fourth, the re-
125 mainder, if any, to the defendants herein. If, after the payment of the first two items above named, there shall not remain a sufficient amount to fully discharge the amount above adjudged to be due by defendants to complainant, then said sum as actually remains, after the payment of the first two items above named shall be paid to the complainant and credited on the amount adjudged above to be due complainant by defendants. For the remainder due by defendants to complainants execution will issue against the said defendants.

Circuit Court of the United States for the Western Division of the Western District of Tennessee.

EASTERN BUILDING AND LOAN ASSOCIATION
vs.
H. L. BEDFORD and WIFE. } In Equity.

Bill to foreclose a mortgage.

Opinion. Filed June 4, 1898.

By an act of the legislature of the State of Tennessee of March 28th, 1891, ch. 2, entitled "An act to regulate the business of building and loan associations" it was required that no building and loan association, organized under the laws of another State should do business in Tennessee unless said association should deposit and continually thereafter keep deposited in trust for all its members and creditors, mortgages amounting to not less than twenty-five thousand dollars or more than fifty thousand dollars, at the discretion of the treasurer. They were also required before commencing to do business to file with the treasurer of the State a duly authenticated copy of their charter or articles of incorporation and a certificate of deposit of the valid securities required.

By another section the officers, directors or agents of foreign building and loan associations were forbidden to solicit subscriptions to their stock in that State or to sell or knowingly cause to be issued to a resident of the State any stock of the association unless a deposit had been made in accordance with the terms of the act, and it had otherwise complied with its provisions. Agents were required to be licensed by the treasurer, for which they were to pay a fee
126 of two dollars, and he was also to receive a fee of twenty-five dollars for filing the papers mentioned in the act. Any violation of the prohibition against the sale of stock without a compli-

ance with the act was made a misdemeanor, and punished as such by fixed penalties.

By another act of March 17th, 1891, ch. 95, chapter 31 of the Acts of the Legislature of Tennessee for the Year 1877, being sections 1992 to 2003 of Milliken & Vertrees Code, was amended so as to apply that act to corporations, chartered under the laws of other States, known as building and loan associations, and other specifically enumerated corporations.

The act of 1877, carried into Milliken & Vertrees Code was an act for the encouragement of mining and manufacturing corporations, which were required, if desiring to carry on their business in this State to file in the office of the secretary of state a copy of their charters or articles of incorporation, and such corporations were to be deemed and taken to be corporations of this State subject to its jurisdiction, to sue and be sued therein in the mode and manner directed by law in the case of corporations created and organized within the State. Then the act conferred the privilege of acquiring and holding real property, which was made liable for its debts. The act gave resident creditors priority. Taxation was regulated. Rights of way were given for the maintenance of roads, bridges, canals, tramways, telegraph lines, etc.; but they were required to begin business within a year, it being declared to be the object of that act to secure the opening and development of the mineral resources of the State, to facilitate the introduction of foreign capital, etc.; and such corporations were authorized to establish villages and settlements for the use and residence of its employés and others; and the sale of liquor was prohibited within a radius of five miles of such villages and settlements.

Subsequently, by an act of March 26, 1891, ch. 122, this act, ch. 31, 1877, was extended to all corporations chartered or organized under the laws of other States or countries for any purpose whatsoever, which may desire to do any kind of business within the State of Tennessee. This last act further required that a copy of the charter should be filed with the secretary of state and an abstract thereof, in every county in which a foreign corporation desired to do business. And then, by section 3, it was enacted that—

"It shall be unlawful for any foreign corporation to do or
127 attempt to do any business or own or acquire any property in this State without first having complied with the provisions of this act, and a violation of this statute shall subject the offender to a fine of not less than one hundred dollars, nor more than five hundred dollars, at the discretion of the jury trying the case."

And, by section 4 when the corporation had complied with the provisions of the act it should be to all intents and purposes a domestic corporation of the State, and if it had no agent in the State upon whom process could be served it was liable to attachment, to be levied upon any property owned by the corporation. The last section of the act re-enacted the provisions of chapter 31 of the Acts of 1877, thus extending all the privileges of that original act to all corporations whatever, coming into the State to do business.

The plaintiff is a building and loan association of the State of

New York, having its location at the city of Syracuse, which has never complied or attempted to comply, except as hereinafter stated, with any of the foregoing acts nor with as subsequent act known in the legislation of the State as the "curative act" of May 10th, 1895, chap. 119, which authorized corporations that had been doing business in the State contrary to the provisions of the former act, to file their charters as required, and be relieved of the penalties and forfeitures incurred, but with the important provision that no suit should be instituted upon any contract thus made valid until after two years from the passage of the act.

By the charter of the plaintiff company it was authorized to establish a local board anywhere, to be composed of its members in that locality to assist in carrying on its business, it being a mutual company. It had a firm of agents in Memphis, Shelby county, Tennessee, and also a local board, composed of members thereabouts. On the 23rd day of January, 1891, before the passage of any of the foregoing acts, except that of 1877, the defendant signed in Shelby county, Tennessee, a written application for shares in the plaintiff association in the form prescribed for the purpose, and customary in doing its business. This application was forwarded by mail through the above agents to the plaintiff company, at its home office in Syracuse, New York. The application was granted by the board of directors at the home office, and on February 2nd, 1891, a certificate for forty-six shares of the stock, amounting to forty-six hundred dollars, was issued to the defendant, being sent to him by mail through the Memphis agents. According to the scheme of the company this stock was to mature by the
128 payment of its dues and assessments on the first of August, 1891. These dues and assessments were payable at its home office, in Syracuse, N. Y., but a by-law authorized them to be paid to the local board or agent where the stockholder resided, if the stockholders so desired.

On March 20th, 1891, the defendant made a written application for a loan, which, according to the custom of the company, was sworn to, and appraisers appointed by the local board indorsed on the application a sworn appraisement of the property which was offered as security. In this application for a loan of forty-six hundred dollars for six and a half years, it was stated that the loan was to bear interest at the rate of 5 per cent. per annum and a premium of 5 per cent. per annum payable annually on or before the last Saturday of each month, "all payments to be made as the lender may direct," and to secure the same the defendant agreed to give a mortgage upon the property offered as security. This application and appraisement, like the application for stock, was sent by the agents through the mail to the home office, at Syracuse, New York; and on the 18th of May, 1891, the board of directors at Syracuse, in the State of New York, recommended and approved the loan. Subsequently, Bedford made a written application, again sent through the mails, for what is called "an advance of loan," and referred to the resolution of the board of directors of May 18th, 1891, allowing the advance at "a premium of ten per cent.," attached to which

written application was the affidavit of one of the agents, which was again forwarded to the board of directors by mail. The defendant and his wife then executed a mortgage upon real estate situated in Shelby county, Tenn., dated May 1st, 1891, duly and properly acknowledged June 18th, 1891, filed for record June 20th, 1891, and duly recorded in the register's office of Shelby county. This mortgage acknowledged the receipt of forty-six hundred dollars and secured the sum of $5,683.08, the same being the principal, interest and premium of the loan, evidenced by seventy-eight notes, dated Memphis, Tenn., May 1st, 1891, payable to said association at its office, in Syracuse, monthly." Having signed these notes at Memphis and recorded this mortgage, they were again forwarded by these agents, through the mail, to the home office, in the city of Syracuse, New York, and, thereupon the plaintiff company drew its draft on the Bank of Onondaga, at Syracuse, N. Y., in favor of the defendant, for the sum of $4,140, which, in due course of business was paid to him, or to his order, at Syracuse, New York.

129 The shares of stock were withdrawn, duly receipted for, according to the customary method of doing business.

The plaintiff company filed a copy of its charter with the secretary of state, on August 11th, 1893, and an abstract thereof in Shelby county, on August 15th, 1893, more than two years after the completion of this transaction, and before the passage of the curative act. The seventy-eight notes executed were all dated May 1st, 1891. Each was for $72.86, except the last three, which were each for the sum of $38.36. They were all payable to the order of the plaintiff company at its office, in Syracuse, New York, the first on or before the last Saturday of May, 1891, and each successive one on the last Saturday of every month thereafter up to and including the last Saturday of November, 1897. These notes represented the amount of dues estimated to mature and become payable on the shares of stock which the defendant held until the same should mature and reach their par value from the payment of the dues, together with the earnings thereon and the interest and premium advance during that period. The shares of stock were also pledged as collateral security in addition to the mortgage.

The mortgage itself contained stipulations to pay the principal, interest and premiums and to conform to the constitution and by-laws of the order, pay the fines and penalties prescribed thereby according to the true intent and meaning of the articles of association, keep the buildings on the premises insured against loss by fire, to pay all taxes, and to perform all other necessary things relative to said premises, which were imposed by the contract and by-laws of the association. The defendant further agreed to pay the monthly installment dues of seventy-five cents on each share. There was also a provision that if he should fail to pay any of the notes, shares or dues, the whole should become fully due and payable; that the shares of stock should be forfeited and the mortgage and contract should be immediately enforced.

The notes were all paid up to and including the last Saturday of

June, 1893, since which time none of the notes, assessments, or dues have been paid.

This bill was filed to enforce the contract and foreclose the mortgage, on the 24th of June, 1895, a little more than thirty days after the passage of the curative act, and before the two years limitation thereof had expired.

130 HAMMOND, *J.*:

The defense in this case is without a particle of merit, the defendant having received nearly five thousand dollars of the plaintiff's money upon a loan secured by a mortgage upon his property in the ordinary way of such transactions. There is no reason why he should not pay the money back and no defence is offered except that the plaintiff being a foreign corporation had no right to make the loan until it had complied with certain administrative rules and regulations of the State of Tennessee, concerning foreign corporations.

Naturally, repudiation of a debt admitted to be just, finds its protest at the bar from the plaintiff's counsel. That protest also must find response in judicial judgment, unless the courts are compelled to sustain the defense upon some inexorable principle of law having its only justification in the maxim, *ita lex scripta est.*

For my part, I am not prepared to concede to State legislation that unrestrained absolutism of power over foreign corporations which is being built up by the usurpation and enlargement of the recognized right to regulate foreign corporations doing business in the State. Those corporations are not outlaws from all constitutional protection, because of this power to regulate them, nor because of a power to prohibit them from doing business in the State. That power of regulation or prohibition does not necessarily mean a power to forbid their home contracts with citizens of the foreign State and about property in that State. It is not more imperious than the equally vaunted police power of a State which it was said by the Supreme Court "cannot be put forward as an excuse for oppressive and unjust legislation." Per Mr. Justice Brown, in Holden *v.* Hardy (Feb. 28, '98), 169 U. S., —; New Orleans *v.* Davidson, 95 U. S., 465; Yickwo *v.* Hopkins, 118 U. S., 356. And, as in the case of the police power, this exaggerated claim of absolute power over foreign corporations has received its check, first in the dissenting opinion in Hooper *v.* California, 155 U. S., 648, 657, and now in the judgment of the full court in Allgeyer *v.* Louisiana, 165 U. S., 578, and that, too, in relation to legislation similar to that set up by this defense. What may be called the constitutional freedom of trade or right of contract as against such legislation has been fully sustained by the latest of these decisions both as against the police power, where the public health, morals or safety is not involved, and this power to regulate or prohibit the business of foreign corporations. "The question in each case," says Mr. Justice
131 Brown, in Holden *v.* Hardy, *supra*, "is whether the legislature has adopted the statute in exercise or a reasonable dis-

cretion or whether its action be a mere excuse for an unjust discrimination, or the oppression, or spoliation of a particular class."

When asked what public policy was at the back of the legislation of 1891, forbidding foreign corporations to do business in the State without having first registered their charters in every county in the State in which they proposed to do business and acquire property, counsel for the defendant replied that it was to prevent irresponsible corporations from getting a footing in the State and to advise the people as to the charter rights and privileges of the companies.

Plainly this is only administrative in its character, and is in no sense at all a policy which affects the health, morals or general safety of the public, and, as applied to a contract like that we have under consideration there is no effect of the policy that in any sense disparages the contract. It is as harmless as it was before and in the nature of the public policy there is nothing to invoke that kind of protection which usually falls within the police power; and it is somewhat misleading, therefore, to attack the contract as being against public policy. The statute makes no distinction between responsive and irresponsive companies. Either may establish themselves by registering their charters.

As to the matter of information the defense has rather a flimsy foundation, for it is far more likely that any one dealing with the corporation would depend upon the abundantly printed and circulated forms of the charter which in this day of cheap printing and rapid communication is all-sufficient for the purposes of information, without the trouble of going to the county-seat to inspect the records. There does not seem to be much in this suggestion to invoke the principle of public safety or even the public welfare as a foundation for the policy stated. It is not to be presumed that the object of the legislature was to make repudiation easy by furnishing a defense like this to the vast number of people who have resorted to the loan and mortgage companies to borrow money which they could not get at home and get abroad at cheaper rates. Possibly the oft-reiterated charge that the real purpose of the legislation was to make fees for the registration officers in the different counties may furnish a clue to the kind of public policy which is the foundation of the legislation; but evidently, forfeitures of contracts are not to be enforced by the courts in aid of a public policy like that un-
132 less it must be done in loyal obedience to the command of the legislature. Certainly it does not fall within the class of cases mentioned by Mr. Justice Brown in Holden *v.* Hardy, where the legislature may impose limitations upon the right of contract to prevent detriment to the well-being and safety of the people or their property. It cannot be denied, nevertheless, that the legislature of Tennessee had the right, and the courts must enforce it, to require foreign corporations to comply with these regulations and might affix any pains and penalties for that purpose which the legislature might choose—and that has been done by this act; so that if we had the malefactors against its prohibitions, and this were a case to enforce those penalties as in Hooper *v.* California, *supra*, we might be compelled to do it.

But when it is claimed that this act makes the contract between the borrower and the lender void or non-enforceable in the courts, it is another matter, which requires the strictest scrutiny before such a penalty can be invoked against the natural justice and the greater public policy of encouraging the enforcement of fair contracts and compelling borrowers to repay the money which they have borrowed.

It seemed to be conceded in the argument by the plaintiff's counsel that the supreme court of Tennessee does not recognize any distinction between statutes which in their terms declare that a contract shall be void as one of the penalties imposed, and those which do more than prohibit the doing of a thing and impose a penalty; and that by our Tennessee law if the thing is prohibited any contract concerning it is void without any explicit declaration of the statute to that effect, and without reference to the fact whether the statute imposes other penalties or no. Stephenson *v.* Ewing, 87 Tenn., 46; State *v.* Insurance Co., 92 Tenn., 420; Hayworth *v.* Montgomery, 91 Tenn., 16; Anderson *v.* R. R. Company, 91 Tenn., 46; R. R. Company *v.* Evans, 66 F. R., 809.

It is not necessary in this case to go into a critical examination of the Tennessee cases to determine whether or not they go to the extent of declaring the contract void or only to that of declaring that the courts of Tennessee will not enforce them, which, be it remembered, are two distinct results, the difference being all-important. If the contracts be void they should not be enforced anywhere, but if there be only a prohibition on the courts of the State from enforcing them they might be enforced elsewhere; and as well probably in the Federal courts sitting in the State of Tennessee, which
133 are not subject to the prohibitions of the Tennessee legislature relating to the State courts. We are relieved from any considerations like these from the fact that this contract, in our judgment, was one over which the State of Tennessee had no power whatever, except possibly to deny its enforcement by the courts of Tennessee, though that is very doubtful.

This was a New York contract; made in New York, to be performed there, and not in any sense a Tennessee contract. The making of such a contract is not doing business in Tennessee and does not fall within the prohibitions of the statute. Essentially, it is not different in respect of this from the contract in the case of Allgeyer *v.* Louisana, *supra*, 165 U. S., 578; nor Pioneer Savings Co. *v.* Cannon, 96 Tenn., 599; nor Lauter *v.* Jarvis-Conklin Mortgage Co., 85 F. R., 894; nor Caesar *v.* Cappell, 83 F. R., 403; nor Jarvis-Conklin Mortgage Co. *v.* Wilhoit, 84 F. R., 514.

It is contended that the case of New York National Building and Loan Association *v.* Cannon (Knoxville, Sept., 1897) 41 S. W. R., 1054, — Tenn. — has authoritatively settled that the contract is void and that the Federal courts are bound by that decision. It does not appear from the report of that case whether the notes were payable in New York or Tennessee, though an inference that they were payable in New York is insisted upon by counsel for the defendant. It is true that in that case it was decided that the

building and loan association was doing business in Tennessee contrary to the prohibitions of the statute, citing Lumber Co. *v.* Thomas, 92 Tenn., 589; Manufacturing Co. *v.* Gordon, 93 Tenn., 597. But it is to be particularly noted that the court does not decide that the contract was void no matter whether it was a New York or a Tennessee contract, but only that "the court of chancery appeals was correct in holding that the contract was illegal," and could not be enforced by the court and in refusing to foreclose the mortgage of the building and loan association." If that be true of the Tennessee State courts it is not necessarily true of the Federal courts, as before intimated. It is a familiar principle that the Federal courts do not follow the penal statutes, imposing penalties of prohibition that relate only to matters of procedure and practice or to matters of jurisdiction. The legislature of a State cannot shut up the Federal courts nor deny parties access thereto. They may prescribe rules of property and declare contracts within their jurisdiction null and void, and thereupon the Federal courts will enforce the rules of property and refuse to enforce the void contracts;
134 but if the legislature leaves the contract valid, enabling the parties to enforce it within jurisdictions that are not amenable to the legislature of the State of Tennessee, I see no reason why the Federal courts may not enforce such contracts, although their enforcement is prohibited to the courts of the State.

This is not, however, to be misunderstood as applying to those cases where the legislation is the exercise of a police power, which fixes a public policy that appertains to the health, morals or safety of the State, to use again the language of Mr. Justice Brown in the case above cited. That class of cases is very near akin to those constituting rules of property. At all events the Federal courts will not enforce contracts that are vicious because they are contrary to the declared will of the legislature exercising that care for the health, morals or safety of the public, to which we have adverted. But it does not follow from this that they will refuse to enforce valid contracts that are harmless in themselves and non-enforceable in the State courts, only because they are not in conformity to certain prescribed preliminary rules and regulations of an administrative character necessary to be complied with before suit can be brought upon them in the State courts. I do not stop to sup-ort this enunciation by the citation of authorities for the reason that it is not depended upon in favor of this judgment.

Whatever respect we may and should have for the adjudications of the supreme court of Tennessee in construing State statutes, it is not imperative that we shall follow a decision which is contrary to our own Federal decisions above cited, and one which has been made long after this contract was entered into and after the rights of the parties therein had fully attached. In such cases it is open to us to follow our own decisions and exercise our own independent judgment as to the validity of these statutes.

The rule upon this subject is nowhere so well expressed as in the case of Louisville Trust Co. *v.* City of Cincinnati, 76 F. R., 296, in which case Judge Lurton was careful to collate the cases on the

subject and to declare the correct rule for our guidance. Burgess *v.* Seligman, 107 U. S., 20.

Another observation upon the case of The New York B. and L. Ass'n *v.* Cannon, *supra*, is worthy to be noted here, and that is that although the contract was declared illegal and not enforceable in the State of Tennessee, the result was so shocking to the sense of justice of that court that it resorted to the well-known prin-
135 ciple that one asking equitable relief must himself do equity and compelled the debtor to repay the money borrowed out of the funds realized by the sale of the property, notwithstanding the so-called illegality of the contract, thereby substantially enforcing it, notwithstanding the prohibitions of the statute.

But conceding all that may be claimed for that case, and admitting that it is a fair inference from the statement of facts that that contract like this was to be performed in the State of New York and not in the State of Tennessee, the final and all-sufficient answer to it is that if the supreme court of Tennessee has properly construed the statute, it is, in our judgment, declared unconstitutional by the Supreme Court of the United States in the above-cited case of Allgeyer *v.* Louisiana, 165 U. S., 578, just as a similar statute of Louisiana similarly construed by the supreme court of that State was declared unconstitutional.

In Caesar *v.* Cappell, *supra*, this court had occasion to examine the authorities upon which the ruling is based that a promissory note payable in the State of New York is a New York contract to which the giving of a mortgage in Tennessee is only an incident and not a part of the contract, and it is only necessary to refer to the reasoning and treatment of the cases found in that opinion. I adhere to that opinion, and hold that the facts in this case which are not unlike the facts in that case, do not change the rule there laid down. It is true that there is much more ground on the facts of this case for the contention that the business was done in Tennessee than there was in the case of Allgeyer, above cited, but this is only a superficial view of the subject. In the Allgeyer case the property insured was in the State of Louisiana; the owner making the contract of insurance was in Louisiana; that which he did to put the contract into being was done in Louisiana, by writing and depositing a letter in the post-office at New Orleans. The agency which he used in his business was the telegraph and its operators or the post-office and its officials. They were all in Louisiana and necessary agencies in the completion of the contract, and yet it was held that this was not doing business in the State of Louisiana because the contract was to be performed in New York, the premiums were to be paid there, the losses, if any, were to be paid there, which made it a New York contract, and the Supreme Court say that if the supreme court of Louisiana was correct in holding that the Louisiana statute forbade the doing of those things in Louisiana because the company had not complied with statutes of
136 prohibition similar to this we have in this case, that the statute was in violation of the fourteenth amendment to the Federal Constitution by depriving the parties of their liberty with-

out due process of law—that is to say, the freedom to make a contract of insurance to be performed in the State of New York.

We must not be misled by the suggestion of counsel for the plaintiffs that in the Allgeyer case it was especially noted that the defendant had no agent in Louisiana, thereby inferring that if the company had had an agent in Louisiana the decision would have been otherwise. That is a mistaken reading of the case. The constitution of Louisiana contained a provision that no foreign corporation should do business in the State without having one or more known places of business and an authorized agent or agents in the State upon whom process might be served, and the court adverted to the fact that there was no known place of business and no agent in the State as a circumstance to show that the company was not doing business in the State and as an indication of what was meant by that phraseology in the legislation then under consideration. It is not at all to be inferred from this that if the insurance company had made this contract through the agency of some solicitor who performed the function of mailing the correspondence by which it was effectuated instead of that correspondence being mailed by the insured himself, that the decision would have been otherwise than it was, and that is all the difference there is in this case. There, Allgeyer wrote and mailed his own letters which were necessary to complete the contract. Here, the defendants' application and subsequent acceptance were also transmitted through the mails albeit by the instrumentality of his own agents or fellow-members of the building and loan association acting in the city of Memphis. These were only his messengers or agents, to put his letters in the mails.

The essential facts are that he applied in the State of New York by mail for a loan and the acceptance of his offer was had in the State of New York and transmitted to him by mail through the same agents as before. The contract was that he would pay the money, principal and interest, in New York, which made it a New York contract, and the fact that the debtor gave him the privilege of paying it here in Memphis if he chose to do so, does not at all affect that circumstance. The most that can be said upon the facts of this case is that the preliminary negotiations for the contract took place in Tennessee. It may be that the agents through whom they were carried on were, in the sense of the Tennessee
137 statute as to those negotiations, doing business in that State contrary to the statute; and it may be that the Supreme Court will refuse to hold that the fourteenth amendment protects the defendant in his right to borrow money in the State of New York, and to mortgage his Tennessee land as security for it if he does the business through such agencies; and may confine that valuable constitutional protection to the bare use of the mails, but I do not see why any such distinction should be made. If it be a sound distinction the utmost that can be claimed is that the preliminary negotiations themselves were illegal and subjected the offending parties to the penalties of the statute, as in Hooper *v.* California, *supra*, but this does not change the ultimate fact that the

defendant here and the plaintiff there entered into a contract in the city of Syracuse, New York, for the loan of the money and the mortgage of the property. It was there in Syracuse that their minds came together through whatever agencies may have been used for that purpose, and the contract of lending or borrowing and mortgaging was done in the city of Syracuse, New York, and not in the city of Memphis, and therefore the statute of Tennessee has no application to it. That part of the business was not done in Tennessee, and it is only that part with which we are dealing in this case.

I understand the case of Allgeyer *v.* Louisiana to settle that it is not within the competency of the legislature to prohibit a citizen of Tennessee from borrowing money in New York from a citizen of New York and giving a mortgage upon his property in Tennessee to secure it and the fact that the lender is a New York corporation does not at all alter the right both of the defendant to make the contract of borrowing and of the corporation in New York to make the contract of lending, according to its capacities in that State. The law of New York is the *lex loci contractus* in such cases and not that of the State where the borrower resides. That is both the business and the legal status of the transaction. It is only a question of how the parties shall get together to make their contract. It seems to me quite preposterous to say, as was suggested in the argument, that the borrower must physically leave the State of Tennessee and be physically present in the State of New York in order to make such a contract valid. It seems to be agreed by the defendant's counsel that if such physical presence in New York had occurred, this contract could be enforced. It is decided in Allgeyer's case that it can be enforced if the contract is made through the agency of the mails, that is to say, through the functions of the postmasters.

I suppose it would be agreed that if the defendant had
138 made the same contract through the agency of the express company that it would not have been illegal; or if he had put a messenger on the cars and sent him with a power of attorney to the city of New York, it would not have been illegal. Now why is it any more illegal to negotiate through persons in Tennessee who are willing to take the burden of attending to the details and transmitting their correspondence through the mails? For my part I do not see any distinction that can be fairly drawn, upon the circumstances, between the two cases.

We have, then, the broad principle, that a contract of borrowing and lending to be performed in the State of New York is the doing of that business within the State of New York, and not within the State of Tennessee, no matter how or what agencies are used for the purpose, and no matter what punishments may be inflicted upon those who dare to accept such agencies within the State of Tennessee.

And, moreover, we have in the Allgeyer case the broad principle that the right of the citizen of Tennessee to make such a contract of borrowing and of the New York corporation, such contract of lend-

ing, cannot be prohibited by the legislature of the State of Tennessee; and it is a misapplication of the power of the State of Tennessee over foreign corporations to assume that it can exercise any such prohibitions upon the freedom of contracts. The whole argument in behalf of this defense, proceeds upon the false assumption, in my judgment, that it was a contract made within the State of Tennessee.

It may be that this will very much narrow and limit the operation of this act of Tennessee, but I cannot see that that is any objection to the ruling here made. It may be that if the foreign corporations can thus "do business" in Tennessee, that we emasculate the power of the State of Tennessee to prevent their "doing business" in that State; but all this is a mere play upon the words, as the only effect of the ruling is to confine the power of the State to that class of prohibitions which prevent the foreign companies from becoming, *pro hac*, Tennessee corporations. That is the privilege given them by the original statute, and all the later statutes that if they will comply with their provisions they shall in effect, become domestic corporations. Indeed the conception of the original statute is one of encouragement and indulgence, and not prohibition; and the fallacy of the defense is that unless they become domestic corporations they shall not be allowed to make contracts with the citizens of Tennessee at all. How far they
139 may go in that direction we need not decide, but we have now the authority of the Supreme Court of the United States for saying that the legislature cannot go to the extent of prohibiting the making of a contract to be performed in the State of New York. There is no anomaly in this position, for, in the former opinion upon this question I cited the case of a Scottish railroad company which built its tracks within the territory of England, ran its traffic trains every day over that territory, kept its station-houses and station agents there, and yet that was held not to be "doing business" within the territory of England. Ceasar *v.* Cappell, *supra*. Hazleton *v.* Miss. Valley Ins. Co., 55 Fed. R., 743, 750.

Reference has been made in the argument to a Tennessee process act, chap. 226, of March 29, 1887, defining, for the purpose of serving process in suits brought against foreign corporations in Tennessee, what is to be, in the purview of that act, held to be "doing business" within the State. That is a special statutory definition for a special purpose and cannot be perverted to the purposes of an interpretation of another act where only a similar phraseology is used for an entirely different purpose. The truth is this phrase "doing business" within the State or "engaged in business" within the State is of such an indefinite and uncertain meaning, so vague and ambiguous, so elastic in its quality, that an act of the legislature which uses it without defining it is almost nugatory for want of certainty as to its meaning; and following the well-known and cardinal rules of construction such phraseology will not be construed by the courts to prohibit harmless contracts, or to secure formidable forfeitures upon the mere literalism of the words used. If one should undertake to define the phrase by specific or particu-

lar designations of the things prohibited, he might be expected to encounter difficulties in doing what penal acts should do in respect of explicit definitions of the offenses created; and as well some lack of power to extend the prohibitions beyond the territorial limits of the State. It is not possible to build a Chinese wall around a State, so that a citizen of it shall make no contracts with a foreign corporation except by permission of the State. The Allgeyer case settles that the mail at least will break through such a prohibitory contrivance.

The defense of usury is untenable. The contract is not usurious under the laws of the State of New York, and in that respect the case certainly is governed by the above-cited case of Poineer Savings Co. *v.* Cannon, 96 Tenn., 599, which holds that the usury
140 laws of Tennessee can have no extraterritorial effect. It has always seemed to me that that case also is almost a direct judgment in favor of the ruling here that this was a New York contract. It decided under very similar circumstances that it was a Minnesota contract and therefore not subject to the usury penalties of the Tennessee statutes. If it was a Minnesota contract for the purposes of usury it was a Minnesota contract for the purposes of the prohibitions of the act 1891.

This view of the case makes it unnecessary to consider the contention of the plaintiff that the defendant is estopped to contest the validity of the contract, upon the ground that he is himself *particeps criminis* and acting in violation of whatever State law there may have been; that he is taking advantage of his own wrong and his own turpitude as a violation of the statute as a defense to a debt voluntarily contracted and for which he has received full consideration. Also, upon the ground that having received and used plaintiff's money with full knowledge, necessarily implied, if not actually existing, of the plaintiff's alleged incapacity to contract in Tennessee, he is estopped to set up that incapacity as a defense upon much the same ground that one who deals with a corporation is estopped to deny the corporate character of the party with whom he deals. And, lastly, that the defendant was himself a member of this company at the time the act was passed, at the time he solicited the loan and at the time he made the contract; that it was a mutual company for which he is as much responsible as the other members and therefore he will not be allowed to set up that its contract was illegal and void, but must leave it to the State to enforce whatever penalties and forfeitures may arise to him and his fellows because of his own illegal conduct, in joining a mutual company acting in the State in violation of the law, or what is the same thing remaining in the company after the act was passed.

It is possible that this is a good defense, but we need not decide the point. Gold Mining Co. *v.* National, etc., Bank, 96 U. S., 640, was a case where a defendant sued by a national bank which had loaned him money was not allowed to plead as a bar that the bank had violated the act of Congress in lending a larger amount of its capital stock than had been actually paid in. There the court says, " we do not think that public policy requires or that the act of Con-

gress intended that an excess of loans beyond the proportion specified should enable the borrower to avoid the payment of the money actually received by him."

141 In Cowell *v.* Springs Company, 100 U. S., 55, upon a breach of a condition in a deed that intoxicating liquors should not be manufactured or sold upon the premises, the grantee was not allowed to set up the invalidity of the title in defense of a suit to enforce the terms of the condition. In Williams *v.* Gideon, 7 Heisk. (Tenn.), 621, the principle is well settled that the creditor who has confirmed a fraudulent deed by receiving a benefit under it, or becoming a party to it is estopped from impeaching it. And there are many other cases holding that corporations acting *ultra vires* and making invalid contracts may nevertheless enforce them against persons who have received the benefit, upon the doctrine that they are estopped to deny the binding effect of that which they have done voluntarily and with full knowledge of the facts. Ohio R. R. Co. *v.* McCarthy, 96 U. S., 258; National Bank *v.* Matthews, 98 U. S., 621, where the court quotes with approval Mr. Sedgwick's statement that, "where it is a simple question of authority to contract arising either on a question of regularity of organization or of power conferred by the charter, the party who has had the benefit of an agreement cannot be permitted in an action founded upon it to question its validity. It would be in the highest degree inequitable and unjust to permit a defendant to repudiate a contract the benefit of which he retains." Sedg. Stat. & Con. Law, 73; Whitney Arms Co. *v.* Barlow, 53 N. Y., 626; Sherwood *v.* Alvis, 83 Ala., 115; Ray *v.* Home, etc., Co., 98 Ga., 132; Macon R'y Co. *v.* Georgia R. R. Co., 63 Ga., 103; Poock *v.* La Fayette B. & L. Ass'n, 71 Ind., 657; Pancost *v.* Travelers' Union, 97 Ind., 162; Steam Nav. Co. *v.* Reed, 17 Barbour, 378.

It must be conceded that this doctrine does not apply to contracts involving moral turpitude on the part of both contracting parties or those which have some infirmity that arises out of a violation of public policy and public law constituted and maintained for the safeguard of the public against dangers threatening the health, morals and safety of the people, but this power of regulating foreign corporations and the methods of doing their business within the State or prohibiting them from doing business within the State at all has no such foundation as that. The laws are purely administrative and more directory than mandatory in their character.

At all events, if there are any cases involving the State's power over foreign corporations to which the doctrine of estoppel does apply, this case must fall within that class.

142 What has been said about the acts of 1891 applicable to all foreign corporations is equally applicable to the special act relating to building and loan associations of March 28th, 1891, ch. 2, p. 12, Acts 1891. That act is purely directory in its provisions. It does not impose any penalties for its violation nor does it contain anything prohibiting the doing of business within the State without a compliance with its directions. Much less than the other acts can it be said to declare the contracts made by foreign building and

loan associations without compliance with it void or to forbid their enforcement in the State courts. Its 7th section prohibits the officers, directors or agents from soliciting subscriptions of stock in this State or selling or knowingly cause to be sold or issued to a resident of this State any stock of the association without having deposited the securities required with the State treasurer; and it also requires the agents to have a license for which, as always, a fee is charged, and it punishes violation of this provision by making it a misdemeanor. Some penalties are imposed upon domestic corporations for a violation of the directions requiring them to keep deposits with the treasurer but there is not one line, word or syllable of the whole act which makes the contracts void. However, since the act of March 17th, 1891, ch. 95, and the act of March 26th, 1891, ch. 122, in their terms apply to building & loan as well as to all other corporations, the whole legislation may be taken as standing together, *pari passu*, upon the same footing one with another, and, taken altogether, it may be said that contracts falling within the prohibitions are not enforceable by the State courts of Tennessee and perhaps not by the Federal courts sitting within the State, though, as before remarked, that may be doubtful. Yet, the fact remains, that a contract by any of these corporations to be performed in another State does not fall within the denunciations and prohibitions of the statute. These acts comprehend every foreign corporation whatever, and if they are to be construed and enforced in the manner suggested by this defense they would make void and non-enforceable every ordinary loan of money by a banking corporation in another State to a citizen of Tennessee carried on by a correspondence through the mails or through the agency of local banks and loan brokers as well as every other commercial contract which can possibly be conceived, made with foreign corporations. It is inconceivable that the legislature had any intention to give the statute such effect as that, and the true spirit and meaning of the act is in my judgment found in the fourth section of the act of March 26, 1891, ch. 122, and also of the original act of 1877, M. & V. Code, sec. 1994, as follows:

143 "SEC. 4. That when any corporation complies with the provisions of this act it shall then be to all intents and purposes a domestic corporation, and may sue and be sued in the courts of this State, and subject to the jurisdiction of the courts of this State just as if it were created under the laws of this State." This means that foreign corporations may have the privilege of becoming Tennessee corporations by compliance with these statutes, and their domestication was the real purpose of all the acts. Foreign corporations that desire such domestication must comply with the provisions of these statutes, and if they carry on their business in the same manner that domestic corporations do and make their contracts to be performed within the State of Tennessee without compliance with these acts then they are within the pains and penalties of the statutes. But if they confine their business to their own home places, make their contracts there, to be performed there, as was done in this case, they are not within the pains and penalties of the acts and such contracts are not affected by them. As to such

contracts it is not within the power of the State to discharge or suspend their obligations. It may be within the power of the State by judicial construction of the act to close the courts of Tennessee to their enforcement, but they cannot close the courts of the United States to suitors who resort to those tribunals for enforcement of the contract. Says Mr. Justice Clifford, in Greene *v.* Commercial, etc., Bank, 3 Cliff., 494 (Fed. cas. No. 5755):

"Doubts may at one time have existed upon the subject, but it is now well settled that a State law cannot discharge or suspend the obligation of a contract made in another State if it was legal where it was made and was a contract with a citizen of another State, not even if it was to be performed in the State whose law is invoked to defeat the remedy."

He cites Baldwin *v.* Bank of Newbury, 1 Wall., 236; Sidam *v.* Broadnax, 14 Pet., 74; Union Bank *v.* Jolly, 18 How., 503; Watson *v.* Tarpley, *id.*, 520; Hight *v.* Stone, 20 How., 175; Demerit *v.* Exchange Bank, 1 Brunner Cas., 598; Fed. cas. No. 3780; Hunt *v.* Danforth, 2 Curtis, 592; Fed. cas. No. 6887, in which Mr. Justice Curtis remarks—"No State law can *propri- vigore*, deprive this court of jurisdiction conferred by the Constitution and laws of the United States," applying the doctrine to the effect of the insolvency laws of a State. See also Cowles *v.* Mercer Co., 7 Wall., 118; So. Pac. R'y Co. *v.* Denton, 146 U. S., 202.

144 It is sufficient to refer to the case of Cæsar *v.* Cappell, 83 F. R., 403, to the judgment of the court upon the effect of the filing of the charter with the secretary of state and the abstract thereof on Aug. 11, 1893, subsequently to the making of the contract and prior to the passage of the curative act of May 10, 1895. We there held that a compliance with the statute prior to act of 1895 was, in itself a sufficient filing which removed whatever infirmity there was in the contract, and therefore it might be enforced by the courts without regard to the act of 1895 subsequently passed. It was there said:

"The infirmity which existed before that time was that the courts of Tennessee, State and Federal, if you please, would not enforce a contract made in disobedience of the statute, but whenever that disobedience was removed and the parties complied with the conditions there was no longer any substantial reason why the courts should not enforce it.

Any reason that might be assigned for not enforcing it would be neither within the mischiefs to be remedied by the statute nor within the enforcement of any policy declared by it, but purely and entirely sentimental; the sentiment being that the contract having been originally made in disrespect of the statute, should be forever disfavored by the courts and repelled from their precincts, until the legislature had granted a statutory pardon. We think it will be found that courts do not proceed upon any such theory unless the infirmity inheres in the vicious, immoral or criminal nature of the act itself."

This still seems to me quite a substantial answer to the defense that has been set up in this suit.

The result is that the plaintiff is entitled to a decree for the collection of its debt and the foreclosure of its mortgage, and the usual decree for that purpose will be drawn and entered.

Decree accordingly.

Circuit Court of the United States, Western District of Tennessee.

EASTERN BUILDING & LOAN ASSOC'N
vs
H. L. BEDFORD and L. M. BEDFORD. } No. 487.

Assignment of Errors. Filed June 4, 1898.

145 Assignments of error by and on behalf of H. L. Bedford and L. M. Bedford, defendants and appellants.

The said above-named defendants and appellants, H. L. Bedford and L. M. Bedford, come and assign the following as errors in the rendition of the decree of June 4th, 1898:

1st. The court erred in rendering a decree against the defendants and each of them for any sum whatever.

2d. The court erred in rendering a decree against the defendants and each of them for any sum for costs of this cause and for making the same a charge against the property or its proceeds.

3d. The court erred in not holding that the Eastern Building & Loan Association of Syracuse, N. Y., had not complied with the acts of the legislature of the State of Tennessee, viz: Act of March 19th, 1877, chapter 31 of Acts of 1877, act of March 10, 1891, chapter 95 of Acts of 1891, act of March 21, 1891, chapter 122 of Acts of 1891, when the contract was made, and in not holding that such contract was void and unenforceable. The court should have held that such contract was void or unenforceable.

4th. The court erred in not holding that the Eastern Building & Loan Association of Syracuse, New York, had never complied with the act of the legislature of the State of Tennessee of March 26, 1891, being chapter 2 of said Acts of 1891, and in not holding that the contract was void and unenforceable. The court should have held that such contract was void or unenforceable.

5th. The court erred in holding that the contract sued on was a New York contract and not a Tennessee contract. The court should have held that the contract was a Tennessee contract and not a New York contract.

6th. If the contract sued on be considered as a New York contract then the court erred in holding it was valid and enforceable. The court should have held, even if it was a New York contract, that it was made by plaintiff in evasion of the Tennessee statutes set forth of Nos. 3 and 4 of this assignment of errors and was void or unenforceable in any court sitting in Tennessee, State or Federal.

7th. The court erred in holding that the statutes of the State of Tennessee referred to in Nos. 3 and 4 of this assignment of errors, if they applied to the contract in question, were in conflict with the Constitution of the United States or any part thereof. The court

should have held that no such conflict existed and that the statutes referred to were valid and covered the transactions in question, and that the contract was void or unenforceable.

146 8th. The court erred in not holding that the act of the legislature of the State of Tennessee of 1887, being chapter 226 of said Acts of 1887, defined what was doing business in the State of Tennessee by foreign corporations, and in not holding that plaintiff, in its transactions in question, was doing business in Tennessee in the sense of said statute without complying with the laws of Tennessee, and that its contract was void or unenforceable.

9th. The court erred in not holding that the plaintiff was and is a New York corporation, and that the law of the State of New York required corporations of other States than New York having transactions with persons in that State to comply with the regulations of the New York statutes on such subjects, and where such compliance was not had, that contracts made were either void or unenforceable in New York. Such being the fact, the court should have held similar requirements as to New York corporations existed in Tennessee, and that the contract was void or unenforceable.

10th. If the contract was not wholly void and was enforceable to any extent in Tennessee, then the court was in error in not holding that the same was usurious. The court should have held that the charging of a fixed premium for the loan made it usurious to that extent, and should have further held that when Bedford was made to withdraw his shares in the plaintiff company that he lost all interest in any profits of the company and agreed to pay a fixed amount in a fixed time, and that thereby the said transaction became usurious and all usury should be eliminated and he be credited on the claim with the full amounts paid by him. The court should have held that this was the law of the State of Tennessee as well as the law of the State of New York, and that if it were not the law of New York that it was the law of the State of Tennessee, applicable to this case, and that plaintiff, as a foreign corporation, had only the rights which a Tennessee corporation would have.

11th. The court erred in holding that defendants and appellants were estopped to plead the invalidity of the contracts sued on.

R. M. HEATH,
W. C. McLEAN,
Attorneys for H. L. Bedford and L. M. Bedford,
Defendants and Appellants.

147 Circuit Court of the United States, Western District of Tennessee, at Memphis.

EASTERN BUILDING & LOAN ASS'N
vs.
H. L. BEDFORD & LOUISA M. BEDFORD. } No. 487.

Prayer for Appeal. Filed June 4, 1898.

To the judges of said court:

The above-named H. L. Bedford and Louisa M. Bedford, conceiving themselves aggrieved by the decree entered herein on the 4th day of June, 1898, do hereby appeal from said decree to the United States circuit court of appeals at Cincinnati, Ohio, for the sixth circuit, and pray that this appeal be allowed and be made returnable in not exceeding thirty days from the date of the signing of the citation and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States circuit court of appeals at Cincinnati, Ohio, for the sixth circuit.

R. M. HEATH,
W. C. McLEAN,
Attorneys for H. L. and L. M. Bedford, Defendants and Appellants.

In the Circuit Court of the United States, Western District of Tennessee, Western Division.

EASTERN BUILDING & LOAN ASSOCIATION
vs.
H. L. BEDFORD & LOU M. BEDFORD. } No. 487.

Supersedeas Bond. Filed June 4, 1898.

Know all men by these presents, that we Hugh L. Bedford and Lou M. Bedford, as principals, and William C. McLean, as surety, are hereby held and firmly bound unto said Eastern Building & Loan Association in the full and just sum of ten hundred dollars, lawful money of the United States, to be paid to the said Eastern Building & Loan Association, for the payment of which well and truly to be made, we hereby bind ourselves jointly and sev-
148 erally, and our joint and several heirs, executors and administrators by these presents.

Signed by us, sealed with our seals, and dated at Memphis, Tennessee, this fourth day of June, A. D. 1898.

Whereas, the above-named principal has prosecuted an appeal to the United States circuit court of appeals for the sixth judicial circuit, holden at Cincinnati, in the State of Ohio, to reverse the decree rendered in the above-entitled suit against said principal by the circuit court of the United States for the western division of the western district of Tennessee.

Now, therefore, the condition of the foregoing obligation is such

that if the above-named principal shall prosecute his said appeal to effect, and answer all costs and damages if he fail to make his plea and the said appeal good, then this obligation shall be void, otherwise the same shall remain in full force and virtue.

HUGH L. BEDFORD, [SEAL.]
LOU M. BEDFORD, [SEAL.]
By R. M. HEATH, *Solicitor.* [SEAL.]
WM. C. McLEAN. [SEAL.]

Signed, sealed, delivered, taken and acknowledged before me at Memphis, Tennessee, this 4th day of June, A. D. 1898.

JOHN B. CLOUGH,
Clerk of said U. S. Circuit Court.

Approved at Memphis, Tennessee, on the day of date of the said bond.

E. S. HAMMOND,
United States District Judge.

UNITED STATES OF AMERICA, }
Western Division of the Western District of Tennessee. }

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its May term, A. D. 1898, at the United States court-house in the city of Memphis, in said district, on, to wit, the fourth day of June, A. D. 1898, in the following cause, to wit:

149 THE EASTERN BUILDING & LOAN ASSOCIATION, Plaintiff, v. H. L. BEDFORD, LOU M. BEDFORD, Defendants. } No. 487.

And now come the said defendants herein, by their solicitors, and file in this cause their petition for an appeal from the decree heretofore entered herein against them on this day, to the United States circuit court of appeals for the sixth judicial circuit, holden at Cincinnati, Ohio, in said circuit; and for satisfactory reasons to the court appearing the prayer of the said petition is hereby granted and the appeal so prayed for allowed, the said defendants having this day filed herein their assignments of error as prescribed by law and the rules of said circuit court of appeals, and having this day in such behalf made and executed to the said complainant their appeal bond as required by law, which said appeal bond has been duly approved by the presiding judge of this court.

No. 487. Circuit court of the United States, western district of Tennessee. Eastern Building & Loan Ass'n *vs.* H. L. Bedford *et al.* Order of court. Entered and filed 4 day of June, A. D. 1898. John B. Clough, clerk.

In the United States Circuit Court of Appeals for the Sixth Judicial Circuit, Cincinnati, Ohio.

EASTERN BUILDING & LOAN ASSOCIATION
vs.
H. L. BEDFORD & L. M. BEDFORD. } No. 487. Citation.

To the Eastern Building & Loan Association, Greeting:

You are hereby cited and admonished to be and appear before the United States circuit court of appeals for the sixth judicial circuit, at a session of said court to be held in the city of Cincinnati, in the State of Ohio, in said circuit, on the second day of July, A. D. 1898, pursuant to an appeal granted by the circuit court of the United States for the western division of the western district
150 of Tennessee, wherein H. L. Bedford and Lou M. Bedford, his wife, are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 4th day of June, A. D. 1898, and of the Independence of the United States the 122d year.

E. S. HAMMOND, [SEAL.]
U. S. District Judge for the Western District of Tennessee.

Acknowledgment of Service.

At Memphis, Tennessee, on this 25th day of June, A. D. 1898, service of the within citation is hereby duly acknowledged.

BUCHANAN & MINOR,
Solicitors for said The Eastern Building & Loan Association.

THE UNITED STATES OF AMERICA, }
Sixth Judicial Circuit, Western District of Tennessee. }

I, John B. Clough, clerk of the circuit court of the United States, for the western division of said western district of Tennessee, do hereby certify that the papers hereto attached, are full, true, perfect and correct copies of the originals and of the entire record and proceedings (with the original citation) in said court as the same now appears of record and upon the files in my office, in the following cause, to wit:

THE EASTERN BUILDING & LOAN ASSOCIATION OF SYRACUSE, N. Y.,
vs.
H. L. BEDFORD, LOU M. BEDFORD. } No. 487.

In testimony whereof, I have hereunto written my name and affixed the seal of said court, at my office in the city of Memphis, Tennessee, this 25th day of June, A. D. 1898, and of the Independence of the United States the 122d year.

[SEAL.] JOHN B. CLOUGH, *Clerk.*

151 *Authentication.*

I, E. S. Hammond, a judge of said court, do hereby certify that John B. Clough, whose genuine signature appears to the foregoing certificate is, and was at the date of the same, clerk of said court, and that his attestation is in due form.

E. S. HAMMOND,
Judge of the District Courts of the United States for the District Aforesaid.

No. 487. Circuit court of the United States, western district of Tennessee. Eastern Building & Loan Association of Syracuse, New York, *vs.* L. H. Bedford, Lou M. Bedford.

152 And afterwards, to wit, on July 6th, 1898, præcipe for appearance was filed in said cause, which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit, October Term, 1897.

H. L. BEDFORD and WIFE
v.
EASTERN BUILDING & LOAN ASSOCIATION. } No. 637.

To the clerk of said court:

Please enter my appearance as counsel for the appellants.

ROBERT M. HEATH.
WM. C. McLEAN.

And afterwards, to wit, on March 14th, 1899, and entry was made upon the journal of said court, which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

H. L. BEDFORD and WIFE
v.
EASTERN BUILDING & LOAN ASSOCIATION.

153 This cause is argued on behalf of appellants in part by Mr. W. C. McLean, and the further hearing of the cause continued until tomorrow at 9.30 a. m.

And afterwards, to wit, on March 15th, 1899, an entry was made upon the journal of said court in said cause, which is in the words and figures as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

H. L. BEDFORD and WIFE
v.
EASTERN BUILDING & LOAN ASSOCIATION.

This cause is further argued on behalf of the appellants by W. C. McLean and R. M. Heath, and on behalf of the appellee by Mr. H. D. Miner, and is submitted.

And afterwards, to wit, on July 5th, 1899, an order was entered in said cause, which reads and is as follows:

United States Circuit Court of Appeals for the Sixth Circuit.

H. L. BEDFORD and WIFE
v.
EASTERN BUILDING & LOAN ASSOCIATION. } # 637.

It is ordered by the court that this cause be certified to the Supreme Court of the United States.

154 And afterwards, to wit, on October 3rd, a copy of the following certificate was sent to the Supreme Court of the United States, which reads and is as follows:

Certificate.

155 United States Circuit Court of Appeals, Sixth Circuit.

H. M. BEDFORD and LOU M. BEDFORD, His Wife,
v.
EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N. Y. } No. 637.

Appeal from the United States circuit court for the western division of Tennessee.

Submitted March 15, 1899; decided July 5, 1899.

Before Taft and Lurton, circuit judges, and Thompson, district judge.

The Eastern Building and Loan Association of Syracuse, N. Y., is a corporation organized under the laws of the State of New York for the purpose and with the power of conducting a general building association business in New York and other States. Its plan of organization is similar to that generally adopted by such associations. Subscribers to its stock pay $1 initiation fee for each share of $100 and 75 cents per month as dues on each share and certain fines on default, and when the whole amount of dues and dividends paid in amount to $100, the holder is entitled to withdraw the same. Borrowing members receive par value of their shares in advance and secure their compliance with requirements as to dues, fines and

interest by mortgage or otherwise. Prior to March 26, 1891, the association had a soliciting agent in Memphis, Tennessee, whose duty it was to solicit persons to become members of the association and to subscribe to its stock. The agent had no authority to accept applications for membership or subscriptions for stock but only the authority to transmit them by mail to the office of the company in Syracuse, New York, where they were accepted or rejected by the board of directors of the association.

156 Three months after a person had subscribed for stock, and the stock had been issued to him, he was, by the by-laws of the association, permitted to apply for an advance of the nominal par value of his shares or, in effect, a loan. This application was forwarded through the soliciting agent to the company at Syracuse together with the certificate of stock, already issued, as a pledge and a statement of the value of the property which it was proposed to mortgage to secure the loan. The application was accompanied by a recommendation of what was called "the local board" in regard to the wisdom of the loan. The local board consisted of certain stockholders of the association living at the applicant's place of residence who had been elected by all the resident stockholders, and whose duty it was to advise the association at Syracuse concerning the value of the property offered and the character of the applicant. The local board had officers, one of whom was a treasurer through whom members might, if they desired, forward payments due to the association at Syracuse, but the by-laws stated that in so doing the local treasurer was acting as agent for the stockholders and not for the association. Another by-law provided that all payments should be made to the secretary of the association at the home office in registered letter, express or money order or drafts.

On the second day of January, A. D. 1891, H. L. Bedford, a resident and citizen of Shelby county, Tennessee, made the following application to the association which he delivered to its soliciting agent at Memphis to be forwarded to Syracuse:

O K. Sup't.	Cashier.	Stock.	A. F. 1, 26, '91. Recorded.	Indexed.	Filed.	Mailed.

46 shares. Number 4773.

Application for Shares in the Eastern Building and Loan Association of Syracuse, N. Y.

Agent, J. H. T. Martin.

I, H. L. Bedford, of Bailey, county of Shelby, State of Tennessee, No. of street or P. O. box —; occupation, farmer; hereby apply for membership in the Eastern Building and Loan Association of Syracuse, Onondaga county, New York, and subscribe for 46 shares of installment stock.

157 I hereby agree to abide by all the terms, conditions and by-laws contained or referred to in the certificate of shares, and will also comply with all the rules and regulations of said association, and do also hereby, in order to facilitate the transaction of business of the Eastern Building and Loan Association of Syracuse, N. Y., make, constitute and appoint the secretary of said association for me, in my name, place and stead, to appear and vote as my proxy upon any and all shares of stock at any time held by me, or standing in my name in said association during my absence, at any and all meetings of stockholders or directors and upon any and all matters which may properly come before any such meetings and attorneys, one or more under him, from time to time in writing to appoint, hereby authorizing, ratifying and confirming all that any said attorney, or his substitute, may do, or cause to be done as such proxy by virtue hereof. This proxy is not in any manner to affect my right to vote on all such stock whenever I am personally present at any stockholders' meeting.

In witness whereof I have hereunto set my hand and affixed my seal this 2d day of Jan'y, A. D. 1891.

Signature of applicant, H. L. BEDFORD. [SEAL.]

H. B. MARTIN, *Witness.*

The price of stock must accompany this application.

Endorsed.

Instructions to Agents.

This application should always be written in ink. All blank places should be filled correctly and plain to avoid any chance of error in the home office. Be particularly careful to have the name of applicant written plain and spelled correctly, and where there appears any possible chance for misreading any word. Agents should use the space at the bottom of application for explanation. The admission fee must accompany the application before the stock can be written at the home office.

Send certificate of shares to:

Name, —— ——.

P. O., ——.

County, —— ; State, ——.

On the 2d of February, 1891, the certificate of stock was issued by the association and sent to its soliciting agent at Memphis, who, a few days later, handed it to Bedford. The certificate was in the words following:

Series No. B 2. Maturing August 1st, 1897. Eastern Building and Loan Association of Syracuse, N. Y.

Certificate number 4773; number of shares, 46; amount, $4,600.

158 This certifies that H. L. Bedford, of Bailey, county of Shelby and State of Tennessee, is hereby constituted a share-

holder of the Eastern Building and Loan Association of Syracuse, New York, incorporated under the laws of the State of New York, and holds forty-six shares therein of one hundred dollars each, and in consideration of the membership fee, together with agreement and statements contained in the application for membership in the association, and full compliance with the terms, conditions and by-laws printed on the front and back of this certificate, which are hereby referred to and made a part of this contract, and the said Eastern Building and Loan Association of Syracuse, New York, agree to pay said shareholder or his heirs, executors, administrators or assigns the sum of one hundred dollars for each of said shares at the end of seventy-eight months from the date hereof or in case of his death prior to the expiration of seventy-eight months, the association will pay the sum of all monthly installments paid on this certificate with interest at 6 per cent. per annum, payable in the manner and upon the conditions set forth in said terms, conditions and by-laws hereto attached. All payments under this certificate are payable at home office of the association at Syracuse, New York within sixty days after the acceptance and approval of satisfactory proofs. This certificate of shares is issued to and accepted by the holder thereof upon the following express terms and conditions:

First. The shareholder agrees to pay or cause to be paid, a monthly installment of seventy-five cents on each share named in this contract, the same to be paid on or before the last Saturday of each month until such share matures or is withdrawn.

Second. If the shareholder shall fail to pay or cause to be paid any monthly installments on or before the last Saturday of each month, he shall pay a fine of ten cents per share for each and every month the payment may be in arrears.

Third. Stock in this association is non-forfeitable; but if a monthly payment on any share becomes past due and payable for a period of six months or more, such share shall be sold at auction for the purpose of paying the arrearages. The proceeds of the sale shall first be used to pay all back monthly payments and fines; the balance remaining after paying all accrued fines and monthly payments shall be paid to the member in whose name the stock stands at the time of sale. If the stock brings no more than enough to pay the accrued fines and monthly payments it shall be bid in by the association and canceled, and the amount standing to the credit thereof in the loan fund shall be divided among the other shares as profits.

Fourth. Members may withdraw their monthly installments at any time by first giving thirty days' notice, and will receive 6 per cent. annual interest on all shares of six months' standing
159 and up to two years; the third year's 7 per cent.; any time after the third year and before maturity 8 per cent.

Fifth. If a shareholder dies his personal representative may withdraw his shares at any time or continue on to maturity.

Sixth. At stated periods the profits arising from interest, premi-

ums, fines and other sources, shall be apportioned among the shares in good standing.

Seventh. All payments must be paid to an authorized agent, or sent to the secretary at the home office by draft, express or money order, or registered letter. Individual drafts or checks not receivable.

Eighth. The association reserves the right at any time to make an investigation in all cases prior to the approval of claims.

Ninth. The by-laws of this association, which are attached to and indorsed hereon, are a part of this contract and such by-laws and this certificate are to be construed together as part of the contract between the association and the shareholder.

Tenth. No shares shall be assignable or transferable on the books of the association, except by the shareholder paying a transfer fee of two dollars for entering the same, and upon consent of the association, indorsed thereon by the secretary after all dues and claims on the same have been paid.

Eleventh. It is agreed by all shareholders of this association that desire loans, that all money in the loan fund shall be sold at a uniform rate of ten per cent., bid as premiums on all loans.

Twelfth. No shareholder shall have any claim to any interest in the affairs, assets or funds of this association, nor the control of them, except as above specifically set forth, and assumes no further liability of any kind whatsoever except as hereafter described.

Thirteenth. In every case where this contract shall cease and determine, or become null and void, then all payments made thereon shall become forfeited to the association.

Fourteenth. Any action brought against this association shall be commenced within six months after filing proofs, and in the county of Onondaga, and State of New York.

Fifteenth. No agent has authority to change this contract in any way, and the association assumes no obligation for any statements not contained in its printed literature.

Given under the seal of said association at Syracuse, New York, the second day of Feb'y, A. D. 1891.

H. H. LOOMIS, *President.*

[L. S.] JNO. J. W. REYNOLDS,
Secretary and Gen'l Manager.

160 Attached to this were the by-laws of which only the following are deemed material:

Article I.

SECTION 3. The principal place of business of this association shall be located at Syracuse, N. Y., but the branches or agencies may be located and business done in any part of the State of New York, or in any other State or Territory of the United States where no legal prohibition exists, by authority of the board of directors, to be evidenced by a vote of a majority of the board, and spread upon its records.

Article IV.

SECTION 1. The annual meeting of the stockholders shall be held at the home office of the association on the second Monday of May of each year commencing with the year 1891, between 2 and 4 o'clock p. m., of which due notice shall be given according to law.

Article XIX.

Contract of members.

SECTION 1. The terms and conditions expressed in the certificate of stock, in connection with the application for membership and the by-laws of the association, form the contract between the association and each shareholder therein.

SEC. 16. All remittances for advance, installments, premiums, monthly installments, fines and penalties, interest and premiums, and all other payments, shall be made to the secretary of the association at the home office, and in registered letter, express or money order or drafts. Individual checks shall not be received.

Article XVI.

Local boards.

SECTION 1. Whenever sufficient stock has been sold in any town to make it advisable the members residing in each town may organize a local board or branch of the association. The officers of the local organization shall consist of a board of from five to nine directors, from whose number shall be elected a president, secretary and treasurer (combined) and attorney; all of whom must be shareholders in the association; these officers shall hold office one year and until their successors are elected.

SEC. 2. The traveling agents of the association are given authority to appoint the first officers of the local board. Provided, however, that officers so appointed shall only hold office until the members of the local board meet and elect their successors.

SEC. 3. It shall be the duty of the officers of the local board to pass on all applications for loans which are received by the
161 association from members residing in the town where such local board is located, and to protect the interest of the association in all practicable ways.

SEC. 4. Members may, if they so desire, make monthly payments on stock to the local treasurer. But such local treasurer shall be deemed to be the agent of the members, and not of the association.

SEC. 5. As soon as the officers of the local board have been appointed or elected, and the names of such officers have been certified to the association by a traveling agent or by the local secretary, a local board charter shall be issued to such board.

SEC. 6. The president of the local board shall call a meeting thereof whenever three members shall request him so to do.

On the 20th of March, 1891, Bedford made an application for a preference for an advance which was forwarded through the same

soliciting agent to Syracuse. Bedford described in detail the real estate upon which he proposed to give the association a mortgage. This application was approved May 18, 1891, by the board of directors at Syracuse. Bedford then applied on June 20th for the loan in the letter following:

Application for an Advance.

To the board of directors of the Eastern Building and Loan Association of Syracuse, N. Y.

GENTLEMEN: At a regular meeting of your board, held May 18, 1891, having obtained the preference for an advance on forty-six shares of No. 4773 of your association, at a premium of ten per cent., I now respectfully request the advance be granted. I hereby agree to comply with the charter and by-laws of your association and all requirements defined by your committee of the board of directors.

H. L. BEDFORD, *Applicant.*

Witness:
J. H. T. MARTIN.

This letter was accompanied by a mortgage to the association, duly executed and acknowledged by Bedford and wife before a notary in Shelby county, Tennessee, of the land in that county previously tendered as security. The mortgage had been duly recorded in Shelby county.

The defeasance clause of the mortgage was as follows:

"This grant is intended as security for the payment of the sum of fifty-six hundred, eighty-three and $\frac{8}{100}$ dollars, the same being the principal, interest and premium of a loan from said association, which said loan was made pursuant to and accepted under the provisions of the by-laws of said association, and which said
162 by-laws have been read by the mortgagor, H. L. Bedford, and are made a part of this contract, which said loan is evidenced and secured to be paid by seventy-eight (78) certain promissory notes of even date herewith, executed by the said H. L. Bedford, payable to the said association at its office in Syracuse as follows: One of each of said notes to be paid on or before the last Saturday of each and every month until all of said seventy-eight notes are fully paid, together with the interest, and each of said notes after maturity at the rate of six (6) per cent per annum, payable semi-annually, until said notes are fully paid. And the said mortgagor, H. L. Bedford, for himself and his heirs, executors, administrators and assigns hereby covenants and agrees with the party of the second part, its successors and assigns to pay said principal, interest and premiums at maturity and the interest accruing on said notes after maturity and all fines and penalties that may be imposed pursuant to the provisions of the constitution and by-laws of said association, and also to keep and perform all promises and engagements made and entered into with said association according to the true intent and meaning of its by-laws and articles of association, and also to keep the buildings erected and to be erected upon said prem-

ises insured against loss or damage by fire in an amount and in such manner and in such company as shall be most satisfactory to the party of the second part, its successors or assigns, so that the loss or losses, if any, shall be payable to it or them, and from time to time when taken out issued on said premises, which policies shall contain the best and most approved form of mortgage clause. And at once to make due proofs in case of loss and do all other things required, deliver over to it or them all policies and renewals thereof by said policies, and also pay and discharge when due and payable all taxes, assessments, rates and other charges now or hereafter levied or assessed upon said premiums and remove all adverse claims, clouds and encumbrances, also that until full payment of the money hereby secured nothing shall be done or suffered whereby said premises shall be diminished in value or any of said policies of insurance affected or vitiated.

In case default shall be made in effecting such insurance or in paying, discharging or removing such taxes, assessments, rates, other charges, adverse claims, claims or encumbrances as aforesaid, it shall be lawful for said second party, its successors or assigns, to effect such insurance and pay such taxes, assessments, rates, other charges, adverse claims, choses or encumbrances and the amount so paid shall be a lien on said premises added to the amount secured by these presents and forthwith due and payable without demand, with interest, and may be collected in the same manner as the principal sum hereby secured. And it is hereby expressly agreed by and between the parties to these presents that if default be made in the payment of any one of said notes or any part thereof as herein provided or in case of waste or non-payment of the taxes, assessments or impositions on said premises, or in case of neglect or re-
163 fusal to keep the premises insured as herein provided or in case the improvements thereon shall not be kept in good condition or repair, or in case of a breach of any of the covenants or agreements contained herein, or in case of failure to duly observe and keep the by-laws of the said association and in either or any of such cases, the whole of the said principal sum, interest, premiums, fines, dues and costs, shall at once become due and payable at the option of said association, its successors or assigns and it shall be lawful for said association or its successors or assigns at any time thereafter to sell the said premises hereby granted, or any part thereof, in the manner prescribed by law and out of the moneys arising from such sale to retain the amount due and unpaid for principal, interest, premiums, fines, dues and costs thereof, taxes, assessments, impositions, insurance and other advances, together with the costs and charges of making such sale, and the overplus, if any there be, shall be paid by the party making such sale on demand to the said H. L. Bedford, or his heirs or assigns. And this controversy shall be void if full payment of the aforesaid moneys, with principal and interest, be made as hereinbefore specified, and if the aforesaid covenants and each of them be well and truly kept and performed as herein specified and provided."

The seventy notes were all of the same tenor, *mutatis mutandis*, as the following:

On or before the last Saturday of June, 1893, I promise to pay seventy-two and 86-100 dollars, $72 86-100, to the order of the Eastern Building and Loan Association at its office in Syracuse, N. Y. Value received. Bailey, Tenn., May 1, 1891.

H. L. BEDFORD.

The business of the association in Tennessee had been lawful down to March 26, 1891, when the following act was passed by the legislature of Tennessee:

CHAPTER 122.

An act to amend chapter 31 of the Acts of 1877, declaring the terms on which foreign corporations organized for mining or manufacturing purposes may carry on their business and purchase, hold, and convey real and personal property in this State, so as to make the provisions of said act apply to all foreign corporations that may desire to own property or to do business in this State.

SECTION 1. Be it enacted by the General Assembly of the State of Tennesssee, That chapter 31 of the Acts of 1877 be so amended and enlarged as that the provisions of said act shall apply to all corporations chartered or organized under the laws of other States or countries for any purpose whatsoever which may desire to do any kind of business in this State.

SECTION 2. Be it further enacted, That each and every corporation created or organized under or by virtue of any government other than that of this State, for any purpose whatever, de-
164 siring to own property or carry on business in this State of any kind or character, shall first file in the office of the secretary of the State a copy of its charter and cause an abstract of same to be recorded in the office of the register in each county in which such corporation desires or proposes to carry on its business or to acquire or own property, as now required by section 2 of chapter 31 of Acts of 1877.

SECTION 3. Be it further enacted, That it shall be unlawful for any foreign corporation to do or attempt to do any business or to own or to acquire any property in this State without having first complied with the provisions of this act, and a violation of this statute shall subject the offender to a fine of not less than $100 nor more than $500, at the discretion of the jury trying the case.

SECTION 4. Be it further enacted, That when a corporation complies with the provisions of this act it shall then be, to all intents and purposes, a domestic corporation, and may sue and be sued in the courts of this State, and subject to the jurisdiction of the courts of this State just as though it were created under the laws of this State.

SECTION 5. Be it further enacted, That when such corporation has no agent in this State upon whom process may be served by any person bringing suit against such corporation, then it may be pro-

ceeded against by an attachment to be levied upon any property owned by the corporation, and publication, as in other attachment cases. But for the plaintiff to obtain an attachment he, his agent or attorney, need only make oath of the justness of his claim, that the defendant is a corporation organized under this act, and that it has no agent in the county where the property sought to be attached is situated upon whom process can be served.

SECTION 6. Be it further enacted, That said chapter 31 of the Acts of 1877, except in so far as the same is amended, enlarged and extended by this act, be and the same is declared to be in full force.

SECTION 7. Be it further enacted, That this act take effect from and after its passage, the public welfare requiring it.

Passed March 21, 1891.

THOMAS R. MYERS,
Speaker of the House of Representatives.
W. C. DISMUKES,
Speaker of the Senate.

Approved March 26, 1891.

JOHN P. BUCHANAN, *Governor.*

Upon the same date an act was passed concerning building associations. The part thereof relating to foreign building associations was as follows: (Chapter 2 of the Acts of 1891.)

SEC. 3. Be it further enacted, That no building and loan association organized under the laws of any other State, Territory
165 or foreign government, shall do business in this State unless said association shall (deposit and continually thereafter) keep deposited in trust for all of its members and creditors, with some responsible trust company, or with some State officer of this or some other State of the United States, mortgages (or other securities) received by it in the usual course of its business amounting to not less than twenty-five thousand ($25,000) dollars nor more than fifty thousand ($50,000) dollars, at the discretion of the State treasurer. All of the personal obligations of its members taken in the ordinary course of business of such association and secured on first mortgage on real estate, all dividends and interest which may accrue on securities held in trust, as aforesaid, by the trust company or the State, as provided herein, and all dues or monthly payments which may become payable on stock pledged as security for loans, the mortgages for which are on deposit in accordance with the provisions of this act, may be collected and retained by the association depositing such securities or mortgages so long as such association remains solvent, and faithfully performs all contracts with its members. Any securities on deposit, as provided herein may from time to time, be withdrawn, if others of equal value are substituted therefor. Every building and loan association organized under the laws of any State, Territory or foreign government shall, before commencing to do business in this State,

First. File with the treasurer of this State a duly authenticated copy of its charter or articles of incorporation.

Second. File with the treasurer of this State the certificate of the proper State officer of another State or the president and treasurer of some responsible trust company certifying that it has on deposit securities, not less than $25,000, taken in the regular course of business as mentioned in this act, in trust for all the members and creditors of such building and loan association.

Third. File with the State treasurer a duly authenticated copy of a resolution adopted by the board of directors of such association stipulating and agreeing, that if any legal process affecting such association be served on said State treasurer, and a copy thereof be mailed, postage prepaid, by the party procuring the issuing of the same, or his attorney, to said association, addressed to its home office, then such service and mailing of such process shall have the same effect as personal service on said association of this State.

Fourth. Pay the State treasurer twenty-five ($25) dollars as fees for filing the papers mentioned in this section.

SECTION 7. Be it further enacted: No officer, director or agent of any foreign building and loan association shall, in this State, solicit subscriptions to the stock of such association, or sell, or knowingly cause to be sold or issued, to a resident of this State any stock of an association while said association has not on deposit securities as required by section 3 of this act, or before said association
166 has complied with all the provisions of this act. License to agents of such companies or associations shall be issued by the treasurer annually, on the first of January and said treasurer is authorized to collect from each agent for said license $2 fee. Any violation hereof shall be deemed a misdemeanor, and upon conviction shall be punished by a fine of not less than ten dollars or more than fifty dollars.

The association filed its charter with the secretary of state of Tennessee on the 11th day of August, 1893, and filed an abstract of the same in the office of the register of Shelby county on August 15, 1893. The association did not comply with the building association laws quoted above in any respect.

There is no evidence that the association solicited stock subscriptions after March 26, 1891, but it does appear that it made several loans of the same kind as the Bedford loan upon stock already subscribed for, after that date.

The supreme court of Tennessee has decided that notes and a mortgage executed under similar circumstances and made payable in Minnesota are Minnesota contracts, but that they are, nevertheless, void in Tennessee and cannot be enforced in the courts of Tennessee. United States Savings & Loan Company *v.* Miller, 47 Southwestern Rep., 17, affirmed on appeal by supreme court, December 18, 1897, without written opinion.

Bedford defaulted in his payments on the notes and the association filed a bill in equity in the circuit court of the United States for the western district of Tennessee to foreclose the mortgage and collect the amount due under his contract. The defendant, Bedford, answered, averring that the notes and mortgage were in vio-

lation of the above-quoted laws of Tennessee and were void and could not be enforced.

This court, being in doubt upon the questions thus raised, hereby certifies to the supreme court the following questions and respectfully requests answer to the same:

First question. Was the validity of the notes signed in Tennessee by the maker, manually delivered by him to the soliciting agent of the association at Memphis to be transmitted to the association at Syracuse for the acceptance of the association at that place and payable at Syracuse, to be determined by the laws of Tennessee or of New York?

Second question. Was the validity of the mortgage executed and delivered under the same circumstances to be determined by the validity of the note to which it was incident, or by the law
167 of the State where the land lay which the mortgage conveyed, and which upon default must be sold to pay the notes?

Third question. May a State by its laws forbidding the transaction of business within its borders annul the contracts of its citizens entered into and to be performed without the State, when those contracts are but the consummation of the inhibited business within the State, without an infraction of the 14th amendment to the Constitution of the United States?

Fourth question. Even if a State may by law refuse enforcement of such a contract in its courts, should a circuit court of the United States sitting in the State refuse to enforce it when jurisdiction over the parties exists by reason of their diverse citizenship?

(Signed) WM. H. TAFT,
HORACE H. LURTON,
A. C. THOMPSON,
Judges of the United States Circuit Court of Appeals for the Sixth Circuit, Sitting in said Case.

Oct. 3, 1899.

168 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing is a true and correct copy of the record in the case of H. L. Bedford and wife *vs.* Eastern Building & Loan Association, No. 637, October term, 189–, as the same remains upon the files and records of said United States circuit court of appeals for the sixth circuit, and of the whole thereof.

Seal United States Circuit Court of Appeals, Sixth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the sixth circuit, at the city of Cincinnati, Ohio, this twentieth day of January, 1900.

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

169 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the sixth circuit, Greeting:

Being informed that there is now pending before you a suit between H. M. Bedford and Lou M. Bedford, his wife, and Eastern Building and Loan Association of Syracuse, N. Y., which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the western district of Tennessee, and we being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme
170 Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 29th day of December, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

United States Circuit Court of Appeals for the Sixth Circuit.

In pursuance of the command of the within writ of certiorari I now herewith send, under my seal, the record and proceedings of the United States circuit court of appeals for the sixth circuit in the within-named case, H. L. Bedford and wife *vs.* The Eastern Building & Loan Association of Syracuse, as the same appears upon the files and records of this court.

Seal United States Circuit Court of Appeals, Sixth Circuit.

Witness my official signature and the seal of said court, at the city of Cincinnati, Ohio, this 23rd day of January, A. D. 1900, and in the one hundred and twenty-fourth year of the Independence of the United States of America.

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

Costs due the United States circuit court of appeals for this transcript are $129.30, unpaid.

171 [Endorsed:] Supreme Court of the United States. No. 444, October term, 1899. H. M. Bedford and Lou M. Bedford, his wife, *vs.* Eastern Building & Loan Association. Writ of certiorari.

Endorsed on cover: File No., 17,558. Supreme Court U. S., October term, 1900. Term No., 153. H. L. Bedford and Lou M. Bedford, his wife, petitioners, *vs.* The Eastern Building and Loan Association of Syracuse, New York. Writ of certiorari & return. Filed January 31, 1900.